

NATIONAL ASSEMBLY

OFFICIAL REPORT

Wednesday, 10th April, 2002

The House met at 2.30 p.m.

[Mr. Speaker in the Chair]

PRAYERS

PAPERS LAID

The following Papers were laid on the Table:-

- (i) Annual Report and Accounts of Higher Education Loans Board for the year ended 30th June, 1999, and the Certificate thereon by the Auditor-General (Corporations).
- (ii) Annual Report and Accounts of Teachers Service Commission for the year ended 30th June, 1999, and the Certificate thereon by the Auditor-General (Corporations).
- (iii) Annual Report and Accounts of the Kenya National Examinations Council for the year ended 30th June, 2000, and the Certificate thereon by the Auditor-General (Corporations).
- (iv) Annual Report and Accounts of Maseno University College for the year ended 30th June, 1998, and the Certificate thereon by the Auditor-General (Corporations).
- (v) Annual Report and Accounts of Moi University for the year ended 30th June, 1998, and the Certificate thereon by the Auditor-General (Corporations).
- (vi) Annual Report and Accounts of Kenyatta University for the year ended 30th June, 1998, and the Certificate thereon by the Auditor-General (Corporations).
- (vii) Annual Report and Accounts of Kenyatta University for the year ended 30th June, 2000, and the Certificate thereon by the Auditor-General (Corporations).
- (viii) Annual Report and Accounts of Jomo Kenyatta University of Agriculture and Technology for the year ended 30th June, 2000, and the Certificate thereon by the Auditor-General (Corporations).
- (ix) Annual Report and Accounts of Egerton University (Ngongongeri Farm) for the year ended 30th June, 1995, and the Certificate thereon by the Auditor-General (Corporations).
- (x) Annual Report and Accounts of Egerton University (Ngongongeri Farm) for the year ended 30th June, 1996, and the Certificate thereon by the Auditor-General (Corporations).
- (xi) Annual Report and Accounts of Egerton University (Ngongongeri Farm) for the year ended 30th June, 1997, and the Certificate thereon by the Auditor-General (Corporations).
- (xii) Annual Report and Accounts of Egerton University (Ngongongeri Farm) for the year ended 30th June, 1998, and the Certificate thereon by the Auditor-General (Corporations).

*(By the Assistant Minister for Agriculture
and Rural Development (Mr. Sumbeiywo) on behalf of the Minister for Education)*

NOTICES OF MOTIONS

ABOLITION OF COST SHARING FOR OUT-PATIENT SERVICES

Mr. Mbela: Mr. Speaker, Sir, I beg to give notice of the following Motion:-
THAT, considering that despite Government commitment to fight poverty from the time of Independence in 1963, poverty remains a serious challenge which now affects more than 56 per cent of the Kenyan population which is unable to fully participate in cost-sharing in public medical institutions, this House urges the Government to abolish cost-sharing for out-patient treatment in its district hospitals, sub-district hospitals, health centres and dispensaries.

BILL TO ABOLISH
POLITICAL PARTIES

Mr. Ndicho: Mr. Speaker, Sir, I beg to give notice of the following Motion:-

THAT, in view of the prevailing political enmity amongst different party members and taking into consideration that the 1992 and the 1997 multi-party general elections were based on tribal or regional interests, this House calls upon the Attorney-General to introduce a Bill to amend Section 1 (A) of the Constitution in order to abolish all political parties in Kenya, making Kenya a partyless State in an effort to curb tribalism in this country.

ORAL ANSWERS TO QUESTIONS

Question No.149

AGREEMENT BETWEEN GOK AND
EU/ACP COUNTRIES

Mr. Speaker: Is Mr. Kombo not here? We will leave the Question until the end. Let us move on to the next Question.

Question No.142

CLOSURE OF POST OFFICE IN RANGWE

Mr. Speaker: Is Dr. Ochuodho not here? We will leave the Question until the end. Let us move on to the next Question.

Question No.130

PROVISION OF WATER IN
LUKENYA/KOMAROCK

Mr. Kaindi asked the Minister for Water Development:-

(a) whether he is aware that Lukenya and Komarock areas of Kathiani have no permanent water resources; and,

(b) what programmes he has put in place to ensure there is adequate water supply.

The Minister for Water Development (Mr. Ng'eny): Mr. Speaker, Sir, I beg to reply.

(a) Yes, I am aware.

(b) In the last financial year, 2000/2001, my Ministry, under the Drought Recovery Programme, successfully drilled a borehole, C-13256, at Kenol Mwanga at a cost of Kshs3 million. The borehole is equipped and is able to serve 2,040 people and their livestock on a daily basis.

Mr. Speaker, Sir, my Ministry has also constructed four earth dams in Lukenya and Komarock areas at a cost of Kshs6 million. All the four dams are fully operational.

Mr. Kaindi: Mr. Speaker, Sir, I am talking about an area close to 100 square kilometres. While I appreciate the fact that the Minister has indicated the limited efforts that his Ministry has put in place and what the Government has done, my question is: What programmes does he have in place for us because I am talking about an area which is occupied by over 70,000 people and these facilities that he has mentioned are insufficient?

Mr. Ng'eny: Mr. Speaker, Sir, it is very interesting that whereas we take most of the Ukambani area as dry, God has not been mean to Ukambani. God has provided plenty of underground water to Ukambani and the Ministry has carried out a fairly exhaustive survey on underground water. It has been found that Lukenya and Komarock in particular contain plenty of underground water. This may be due to the influence of Athi River and other rivers upstream. Subject to the availability of funds, the Ministry intends to exploit all these potentials for the benefit of the wananchi.

Mr. Kikuyu: Mr. Speaker, Sir, whereas we appreciate that we have a lot of underground water, the people living in Komarock, Lukenya and all the former ranching areas have no water to drink. They also have no water for their livestock. What immediate steps is the Ministry taking to supply these people with water so that they do not get waterborne diseases because of sharing water from the same dams with wild animals and livestock? Is that not risking the lives of our people? What is the Ministry doing about it?

Mr. Ng'eny: Mr. Speaker, Sir, I appreciate the hon. Member's concern. It is rather unfortunate that the

settlement of most areas, where there used to be large ranches, took place more rapidly than the development. Whereas we appreciate that we need more boreholes in those areas, it is important to note that settlement took place at a very fast pace not enabling the Government to plan for those facilities. That is why I said that a thorough survey has been carried out and as soon as the money is available, it is fairly a quick job to drill a borehole where there is water resource.

Mr. Kaindi: Mr. Speaker, Sir, the Minister has indicated that when funds are available, they will drill the boreholes. But he also knows within his Ministry that they have received some grants from the Japanese Government. I thought the Minister would be more specific and tell us that where we have undertaken geo-surveys - and we have already done that through the community efforts - we would be included in the programme.

Mr. Speaker, Sir, could he be a little bit more categorical and tell us whether, in that programme which is almost coming on board, Komarock will be considered for the provision of water?

Mr. Ng'eny: Mr. Speaker, Sir, that programme is now underway and I believe in the next financial year, you will see very many activities in Komarock and Lukenya areas.

Mr. Speaker: Very well! Next Question, Mr. Muihia!

Question No.025

TARMACKING OF ROADS IN GATUNDU SOUTH

Mr. Muiruri, on behalf of **Mr. Muihia**, asked the Minister for Roads and Public Works:-

- (a) whether he could inform the House how many kilometres of road in Gatundu South Constituency have been tarmacked in the last 20 years; and,
- (b) when he will tarmac Road E496, Gacharage-Gatundu-Juja, which serves tea, coffee and dairy farmers in the area.

The Assistant Minister for Roads and Public Works (Eng. Rotich): Mr. Speaker, Sir, I beg to reply.

(a) My Ministry has not tarmacked any new roads in Gatundu South in the last 20 years.

(b) The tarmacking of Road E496 will be done, depending on the prioritization of the District Roads Committee under whose jurisdiction it falls, and when funds become available.

Mr. Muiruri: Mr. Speaker, Sir, the Assistant Minister has admitted that for the last 20 years not one single road in Gatundu South, which is the home of the founding father of this nation, President Jomo Kenyatta, has been tarmacked. Why has it been neglected for the last 20 years since his death?

Eng. Rotich: Mr. Speaker, Sir, we have not neglected the road. This job was done, initially, in the first 20 years. I believe the residents are lucky because the other people did not get tarmac roads in the first 20 years.

(Laughter)

Mr. Ndicho: Mr. Speaker, Sir, the Assistant Minister is not honest when he hides behind the reasons that the Thika DDC has not prioritized the tarmacking of Road E496---

Mr. Anyona: On a point of order, Mr. Speaker, Sir. Are you satisfied that the reference of the hon. Member to the Assistant Minister as not being honest is really parliamentary?

Mr. Speaker: What did he say?

Mr. Anyona: He said the Assistant Minister is not being honest!

Mr. Ndicho: But I had not finished---

Mr. Speaker: Order! Order, Mr. Ndicho! It is the business of every Member here present to uphold the dignity of this House. Therefore, Mr. Anyona is within his right to do that. So, will you cease from imputing dishonesty on the Assistant Minister?

Proceed!

Mr. Ndicho: I wish to replace the word "dishonest" with "insincerity." I am a member of the Thika DDC which prioritized the tarmacking of the Gacharage-Gatundu-Juja Road because it serves a very important part. Could he confirm to this House whether he has received the DDC recommendation or not? We have done our part and the other part is yours.

Eng. Rotich: Mr. Speaker, Sir, I am not aware of the report from the Thika DDC, but if there is any copy, please, forward it to us and then we can do the cost analysis for this road.

Mr. Ndicho: On a point of order, Mr. Speaker, Sir. Did you hear the Assistant Minister asking me to forward copies of the DDC minutes to him?

Mr. Speaker: He is totally out of order! Mr. Assistant Minister, the hon. Member for Juja is not your officer on the ground. You must tell that to your officers!

Eng. Rotich: Mr. Speaker, Sir, I am sorry. We shall contact our District Works Officer to get those reports.

Mr. Muchiri: Thank you, Mr. Speaker, Sir. In part "b", the Assistant Minister has said that the road will be done with the District Roads Board (DRB) funds. The DRB allocation per constituency is Kshs5 million or less. How is the money going to be used so that it can be enough to tarmac, at least, five kilometres of road? I have passed through that road; it is more than 20 kilometres.

Eng. Rotich: Mr. Speaker, Sir, I did not say that we are going to use the funds meant for the constituencies. I said the DDC should prioritize the roads to be tarmacked. If it has, we shall get a copy from our District Works Officer. The Kshs5 million will not be used for tarmacking this road. I did not say that.

Mr. Speaker: Very well! Next Question, for the second time, Mr. Kombo!

Question No.149

AGREEMENT BETWEEN GOK AND
EU/ACP COUNTRIES

Mr. Munyasia: On a point of order, Mr. Speaker, Sir. Mr. Kombo is in Ethiopia attending some international conference. Could I ask you to defer this Question to another day?

Mr. Speaker: Yes, but under the Standing Orders, I am supposed to know where Members go. Anyway, I will defer the Question, but ask him to let me know why he went away without my permission!

(Question deferred)

Mr. Maitha: On a point of order, Mr. Speaker, Sir. If I could remind you, Mr. Kombo did inform you that he was going to be away and he requested you to bring forward another Question. So, you are aware!

(Laughter)

Mr. Speaker: Well, I am glad I have got an unpaid personal assistant! Thank you. Next Question, Dr. Ochuodho, for the second time!

Question No.142

CLOSURE OF RANGWE POST OFFICE

Mr. Speaker: Dr. Ochuodho is not here? The Question is dropped.

(Question dropped)

QUESTIONS BY PRIVATE NOTICE

ARREST OF KENYAN FISHERMEN BY UGANDAN FORCES

Dr. Oburu: Mr. Speaker, Sir, I beg to ask the Minister of State, Office of the President, the following Question by Private Notice.

(a) Is the Minister aware that Ugandan security forces have impounded 20 fishing boats and arrested several fishermen around Wichlum, Wagusu and Rusinga Island beaches on 20th March, 2002, and detained them at Wayasi Island?

(b) Is he further aware that this action has completely paralysed fishing activities in the area?

(c) What urgent steps is he taking to ensure security of Kenyan fishermen and the restoration of fishing activities in the area?

The Assistant Minister, Office of the President (Mr. Kochalle): Mr. Speaker, Sir, I beg to reply.

(a) I am aware that on diverse dates during March, 2002, five boats belonging to fishermen based at Ringiti and Remba Islands of Mfangano Division, Suba District, were impounded by the Ugandan authorities and detained at the island in Uganda.

(b) No, I am not.

(c) The Provincial Administration and the Fisheries Department intervened and the boats have since been released. Fishing activities continue as usual.

Dr. Oburu: Mr. Speaker, Sir, I am quite surprised by the casual manner in which the Assistant Minister is treating this Question. This Question was brought here by Mr. Wanjala in the Fifth Session. Fishermen were harassed

by the Ugandan authorities. Some fishermen were even killed and robbed of their property. This was not the only incident. Boats were confiscated and fishermen in constituencies along Lake Victoria heavily fined. Because this was not the first time such an incident occurred, I would like the Assistant Minister to tell the House the permanent solution they are going to apply to this particular situation. There has been constant incursion by Ugandan security forces into Kenyan waters, who harass our fishermen. We do not even know how the Ugandan authorities determine where the border is. How do they know that this fish belongs to Uganda and this other one does not belong to Kenya? Let the Government tell us the permanent solution to this problem of constant incursion of Ugandan security personnel into Kenyan territorial waters.

Mr. Speaker: Mr. Assistant Minister, it is true that I have similar approved Questions brought here by different hon. Members from different parts of Lake Victoria, about harassment of Kenyan fishermen by Ugandan security forces, who then take away their equipment. I am sure you have all the relevant information.

Mr. Kochalle: Mr. Speaker, Sir, the information I have is that we have arranged some meetings for 26th April, 2002, so that Kenyan and Ugandan authorities can discuss the co-existence between the sister states in relation to fishing activities.

Mr. Anyona: Mr. Speaker, Sir, I would like to believe that the action taken by the Ugandan security forces is illegal. That would be my starting point if I were a Government Minister. The Government of the Republic of Kenya is entitled to take action of some sort against illegality committed against its people. What action did the Ministry take following those incidents? The meetings he has talked about are meaningless. What has he done?

Mr. Kochalle: Mr. Speaker, Sir, in the meantime, we are continuing with the arrangements for the negotiations. Something will be done to ensure that our people are not harassed any more.

Dr. Omamo: Mr. Speaker, Sir, these incursions into our waters and harassment of our people are now common knowledge. Why do our security personnel not do pursuit of Ugandan men right into Ugandan waters, so that they also feel the pinch? Could the Assistant Minister tell the House why our security officers are behaving like castrated bulls as far as this matter is concerned?

Mr. Kochalle: Mr. Speaker, Sir, that case does not arise. Our security men are doing their work well. They do whatever is good for the country. So, plans are being made and something will be done.

Mr. Wanjala: Mr. Speaker, Sir, today, fishermen are the most impoverished lot of this country's population because they cannot access their own natural resource. Lake Victoria is shared by three countries. Our fishermen have lost their fishing gear to Ugandans. On 13th March, 2002, fishing gear worth Kshs500,000 belonging to my constituents was confiscated and is still being held at Sigulu.

Mr. Speaker: Mr. Wanjala, your Question is coming shortly. So, be brief.

Mr. Wanjala: Mr. Speaker, Sir, could the Assistant Minister tell the House why our Marine Police Unit in Kisumu, Busia and Bondo has no speed boat for use in Lake Victoria to protect our fishermen despite the fact that the fishing industry contributes a lot of revenue to the country?

Mr. Kochalle: Mr. Speaker, Sir, we know very well that fishing is that region's main economic activity. So, we are looking into the matter, and security will be tightened in that area.

Mr. Maitha: Mr. Speaker, Sir, sometime last year, a Question similar to this one was brought here by Mr. Kajwang. The hon. Member requested the same Assistant Minister to ensure that some Kenya Navy personnel are transferred from Mombasa to Lake Victoria. What effort has the Assistant Minister made to have some Kenya Navy Personnel stationed around Lake Victoria for the protection of our fishermen?

Mr. Kochalle: Mr. Speaker, Sir, no plan has been made for some Kenya Navy personnel to be stationed in that area.

Mr. Speaker: Mr. Assistant Minister, I hope that Questions are not being answered here as a routine. Lives of Kenyans are at stake.

Could you ask the last question, Dr. Oburu?

Dr. Oburu: Mr. Speaker, Sir, I hope that the Assistant Minister is aware some of the islands on which our people are being harassed and detained belong to Kenya, but have quietly been ceded to Uganda. For instance, Wayasi Island on which fishing gear was detained and Kenyans fined, and Hama Island, are in Kenya. Why has the Kenya Government allowed Sio, Hama and Wayasi Islands to be seceded to Uganda? That is where our people are being harassed. I have with me here the Queen's Ordinance-in-Council, which established the Kenya/Uganda border. From this document, it is very clear that these Islands are part of Kenyan territory. I can even table the Ordinance.

(Dr. Oburu laid the document on the Table)

Mr. Kochalle: Mr. Speaker, Sir, we know that there is no island which belongs to Kenya which has ever been given to any other country.

Mr. Wamae: On a point of order, Mr. Speaker, Sir. Is it in order for the Assistant Minister to be so casual in his answers your reminder to him to be serious, given the fact that Kenyans are being persecuted and their

equipment confiscated?

Mr. Kochalle: Mr. Speaker, Sir, the hon. Member has not asked me any question.

(Laughter)

Mr. Ngure: Mr. Speaker, Sir, could the Assistant Minister tell the House what he is going to do to recover the fishing gear and the outboard engines that have confiscated? Only the boats have been returned, but the fishing gear, which is the most expensive of the items that were confiscated, has not been returned to the fishermen.

Mr. Kochalle: Mr. Speaker, Sir, we are negotiating with the Ugandan Government so that the items that have been taken away from our fishermen can be returned to them.

Mr. Shill: Mr. Speaker, Sir, this is a very serious Question.

An. hon. Member: Do you come from a fishing area?

Mr. Shill: Although I do not come from a fishing area, I have a moral obligation to ask questions on behalf of other Kenyans.

Hon. Members: Yes! Proceed!

Mr. Shill: Mr. Speaker, Sir, there are two serious issues which have been raised here. One of them is that some land which belongs to Kenya has been taken over by Uganda. The other issue is that up to now, the Assistant Minister has not told us whether the affected Kenyans have committed any crime for them to be harassed. Could the Assistant Minister, therefore, clarify these two issues?

Mr. Speaker: Mr. Assistant Minister, did the Kenyan fishermen trespass into Ugandan waters for them to lose their boats and fishing gear, or was the equipment confiscated in Kenyan waters?

Mr. Kochalle: Mr. Speaker, Sir, I am not aware.

Hon. Members: On a point of order, Mr. Speaker, Sir.

Mr. Wamalwa: Mr. Speaker, Sir, this is a very important Question concerning relations between two friendly neighbouring countries. It affects the economic rights of Kenyan fishermen around the Lake. The way the Assistant Minister has handled this Question - although I do not want to judge - leaves a lot to be desired. I am sure he has not satisfied any of the hon. Members here. Would it be possible to ask that a better answer be brought to this House next week?

Mr. Speaker: On Tuesday!

Mr. Wamalwa: Thank you, Mr. Speaker, Sir.

Mr. Speaker: Next Question, Mr. Kariuki!

ENHANCEMENT OF SECURITY AT AERODROMES

(Mr. Kariuki) to ask the Minister of State, Office of the President:-

On realisation that the level of security systems at all aerodromes is far below the current international standards and the apparent exposure to terrorism, what is the Government doing to address this very serious matter?

Mr. Speaker: Is Mr. Kariuki not here?

Mr. Gitonga: Mr. Speaker, Sir, I was on my way to tell you that, at the request of Mr. Kariuki, this Question should be deferred until tomorrow.

Mr. Speaker: Why did you not see me much earlier? The Question is dropped!

(Question dropped)

Mr. Gitonga: Mr. Speaker, Sir---

Mr. Speaker: Order, Mr. Gitonga! My Chambers are open all the time. This is a Question by Private Notice. It must be dealt directly by the hon. Member with the Speaker.

Next Question by Mr. Gatabaki!

ILLEGAL FLIGHTS BY AN ISRAELI CHARTERED AIRLINE

(Mr. Gatabaki) to ask the Minister for Transport and Communications:-

(a) Is the Minister aware that a chartered airline by the name CAL established in Israel Agrexo, an Israel growing consortium, operated 15 illegal and unlicensed flights from Kenya, freighting flowers

to Europe from October, 2001, and that the flights were terminated by the Directorate of Civil Aviation on 31st December, 2001, following strong objections by Kenya operators?

(b) Is he further aware that the airline has applied for a licence and that its application was heard on 22nd March, 2002?

(c) Could he order comprehensive investigations into the activities of the airline and the repercussions its operations will have to the Kenya Flower Industry?

Mr. Speaker: Is Mr. Gatabaki not here?

Eng. Karue: He is absent but---

Mr. Speaker: Order! I am sorry! He is not in the House! He is absent, and the Question is dropped.

(Question dropped)

FOREST DESTRUCTION BY NYAMIRA COUNTY CLERK

(Mr. Anyona) to ask the Minister for Local Government:-

(a) Is the Minister aware that the Clerk of Nyamira County Council has cut down trees and destroyed Manga Escarpment Forest in Kitutu Masaba?

(b) Who authorised the Clerk to destroy the forest land and for what purpose?

(c) What legal measures will the Minister take against the Clerk and all those involved in the destruction of the forest?

Mr. Anyona: Mr. Speaker, Sir, as a matter of procedure, I wanted to raise an issue about this Question. I do not know whether I should ask it first. This is because I directed this Question to the Ministry of Environment and Natural Resources. It has been placed under the Ministry of Local Government without my knowledge. I do not know whether the correct thing to do is to raise that issue now, or after I have asked the Question.

Mr. Speaker: Well, if you are not happy, the Question should be directed to the Ministry of Local Government. I can defer it and then you can have discussions with the Clerk and find out what the problem is. Would you like me to defer it?

Mr. Anyona: Yes, Mr. Speaker, Sir.

Mr. Speaker: I defer the Question. Please, Mr. Clerk, can you help Mr. Anyona to find out why his Question did not go where it was intended?

Next Order!

(Question deferred)

MINISTERIAL STATEMENTS

CLARIFICATION ON THE COFFEE ACT

The Minister for Agriculture (Dr. Godana): Thank you very much, Mr. Speaker, Sir.

Hon. Members: Be serious!

The Minister for Agriculture (Dr. Godana): Mr. Speaker, Sir, I am always very serious! I regret that I had to attend a funeral yesterday, but I remember writing to the Speaker---

Mr. Speaker: Yes, I communicated that to the House. It is within the knowledge of the House.

The Minister for Agriculture (Dr. Godana): Mr. Speaker, Sir, I have two statements to give, one on coffee and the other on sugar.

(Loud consultations)

I would want to plead for attention from all hon. Members.

Mr. Speaker: Order, hon. Members! I am sure in this House that there are a lot of hon. Members who are very keen to know what is happening on sugar and coffee. They have a right to hear what the Minister has to say. A lot of people in Kenya depend for their livelihood on those two crops.

Proceed, Dr. Godana.

The Minister for Agriculture (Dr. Godana): Thank you, Mr. Speaker, Sir. Each statement is in response to specific requests by hon. Members and the direction from the Chair that I respond to them.

Hon. Members will recall that last week that I did, indeed, on the date that we were discussing the Supplementary Budget proposals, start on the statement on coffee, and I had virtually gone through it. I was left with one paragraph when, because of the statutory requirement that the business of the day had to start by 3.30 p.m., I had to

cut it short. It is my understanding that most of hon. Members would want me to go back over the statement from the beginning and complete it. So, I ask all to bear with me.

Hon. Members will recall that when we passed the Coffee Act, 2001, I pleaded with the House that we needed more time to implement the Act and the time frame envisaged in the Act as far as amendments made on the Floor of the House. Hon. Members decided against my advice that the Act should commence on 1st April, 2002, and that was passed on the 6th December, 2001. We had only less than a month within which to do a lot of other things that had to be done to prepare the ground properly for the enforcement of the facilitation of the Act. The Act, along with others, was assented to on 31st of December, 2001, and the task force was appointed to prepare necessary rules. The draft copy rules 2002 produced were discussed with the Board and the Parliamentary Departmental Committee on Agriculture, Lands and Natural Resources in several meetings which date to March, 2002. Meanwhile, a number of stakeholders continued to submit memorandum on issues while others sought meetings with the Ministry's officials. Through these submissions and meetings and consultations, we realised exchange of views before the rules were finally drafted and submitted to the Attorney-General for formal drafting.

As hon. Members will recall, the Coffee Act of 1934 was being overhauled for the first time in the history of this country. However, during the enactment of the new Coffee Act, amendments to the Coffee Bill 2001 were introduced at the Committee Stage in Parliament - as I stated earlier - against my tenuous advice. These amendments gave rise to new policies such as the requirement for a 30-day notice in advertising applications from the marketing agents, and requirements that companies incorporated to market coffee have separate directors, to mention just a few. These amendments produced hurdles which had to be recognised in preparing the rules; that is, hurdles which had not been foreseen since the amendments were not incorporated in the original draft Bill which had been the product of months of consultations and negotiations.

It is also recognised that careful studies were needed as there were many interested groups in the coffee industry. It also recognised that the industry has been lent by various organisations close to Kshs18 billion. This is the reason why the coffee industry nearly collapsed. Already, the Coffee Board of Kenya (CBK) is in deficit of about Kshs260 million and the former Director has spent some Kshs63 million incorporating a fully fledged company. I would call it farmers bank which has tied farmers' money to the tune of Kshs300 million in the Treasury Bills. Hon. Members, definitely, must recall that from the beginning, it was the advice of the Government that this was improper and it was not in tune with the procedure for the establishment of banks, and Government and the Ministry of Agriculture and Rural Development and had nothing to do with it. The past directors claim that the bank is a private company, yet they used the CBK's resources. This is another factor that hon. Members must always bear in mind. The coffee cess money amounting to Kshs531 million has been spent without being properly accounted for since 1997. There is need to determine how this mismanagement will be stopped under the new law, or to ensure that we do not get a recurrence of a similar game under the new law.

Currently, the CBK owes farmers Kshs798 million, and others, that is other directors, some Kshs425 million, totalling Kshs1.22 billion. That is the indebtedness with the CBK. The farmers, in turn, owe the CBK some Kshs270 million, and farmers also owe others Kshs42 million, while coffee dealers owe the Board about Kshs48 million, totalling some Kshs560 million. This debt, together with the need for a smooth transition which hon. Members will recall I kept on emphasizing if the new reforms will succeed, dictated the need for an interim Board during the transition, in order to avoid some people taking advantage of the situation.

I recall that both in the debate on the policy document before the House and in the debate on the Bill, when it came to the House, we emphasised that it is critically important to avoid legal lacunae in the process of the transition from the old management system to the new one which will be led by farmers themselves. Everybody is concerned, and certainly, the Ministry of Agriculture is very concerned about the need for a smooth transition and its need to assure the people that obligations already incurred will be met in terms of Section 45 of the Coffee Act, 2001.

The life of the transitional Board was extended to facilitate the Board to organise elections whose date will be set soon, and also to process the business rules to facilitate appointment of marketing agents. We finalised dealing with the draft business rules and forwarded them to the Attorney-General. It is my understanding that those rules will be gazetted any time from now.

I want to take this opportunity to assure the marketers that the interim Board will undertake the transition in a smooth, transparent and orderly manner, as we do not want to repeat the kind of problems we experienced in 1997 when the Co-operative Societies Act was hastily drafted, resulting in poor implementation and the consequent chaos in the co-operative movement in this country. It resulted in splits in numerous co-operative societies, including those from the coffee zones. This latter matter is now being addressed by the Co-operative Societies Amendment Bill, which I hope, will be published very soon.

The life of the interim Board was extended recently under the State Corporations Act, which gives overriding, powers notwithstanding any provision in any other law dealing with a specific parastatal, to the Chief Executive and, indeed, to the Minister to do the kind of thing that we had to do in this case. All we had to do, instead of appointing an entirely new team, was to extend on an interim basis, up to the end of May, the life of the present interim Board. We

thought this would be better than constituting another new team. This is being done to avoid chaos in the industry and the Board will continue to receive and market coffee until the desired results are achieved through consultations. The Board will also invite applications from prospective marketing agents who are appointed by growers and advertise them in the Press before processing applications.

Thank you.

Mr. Wamae: Mr. Speaker, Sir, this is a very important statement. Could the Minister tell us what has happened to the coffee cess money which is supposed to be used by farmers to repair roads in their own areas? If Kshs531 is being withheld by the Coffee Board of Kenya, then that is a very serious matter, and that is why the roads in coffee growing areas are in a very poor state. What is the Minister going to do to ensure that that money is given to the farmers? Secondly, the total indebtedness to the coffee industry is Kshs1.2 billion. Has there been fraud in this matter? Thirdly, what has happened to the Kshs60 million which the directors of the Coffee Board of Kenya used to establish the Coffee Bank? Is that a legitimate expenditure on money belonging to the farmers?

Mr. Speaker: Dr. Godana, can you take all of them and then respond?

Dr. Godana: Mr. Speaker, Sir, I would rather respond to this one first. I would like to start with the question of the money which the Coffee Board of Kenya directors spent as the cost of establishing the so-called bank. From all the records I can see, the Government was very clear about this matter both in the Ministry of Agriculture and even the Ministry of Finance from the beginning, that this was not the procedure of establishing a bank. I do remember as a citizen of this country, but not as the Minister for Agriculture, that leaders, especially from the coffee growing areas - and I am not saying those in this House are the affected leaders - did take the side of the Coffee Board of Kenya directors who were pushing for the establishment of this bank. I think this is how farmers got duped into contributing colossal sums of money to establish a phoney bank. The position of the Government remains the same, and I made it clear at the time when I launched the new interim Board that, that money belongs to the farmers and it should be refunded immediately. I do understand that the money which has been spent, ostensibly as cost by the Board members is out of interests earned through Treasury Bond deposits. I think this is a matter for the Members of the company, the shareholders included, to find a way of dealing with it. They were supposed to have formed a company and the shareholders ultimately, will have to take the complaints. But the position of the Government is the same.

As regards the coffee cess money, I would like to tell the hon. Members that we are dealing with the same old problem, which has dictated, in the case of tea, for example, for us to devise a new system involving both the tea factories and the local authorities, as well designing formulae of apportioning out those sums of money between the roads through the management committees, and the local authorities which want to keep some of the money for other purposes. The coffee cess funds were definitely spent in a manner in which they were not properly accounted for. I think this is a matter on which investigations will have to be done, and the new Board may have to take it up. If it is criminal, I suppose the law will have to take its course. When I talk of obligations being transferred in a transparent manner to the new management, this is one of those obligations.

Mr. Anyona: Mr. Speaker, Sir, I would like to expand a little more on the question of the farmers' bank. I brought a Question to this House on behalf of farmers in Kitutu Masaba who had been duped into this manner. The Ministry of Finance did confirm what the Minister for Agriculture has just said; that the establishment of the farmers' bank did not comply with the law. The Ministry of Finance did say that farmers will be refunded their money. The Coffee Board of Kenya is an organ of the Government. Here is a Board that has defrauded farmers. What is the Ministry going to do, in conjunction with the Ministry of Finance and the Attorney-General, to make sure that they investigate and prosecute those concerned, and to make sure that farmers are given back their money?

Dr. Godana: Mr. Speaker, Sir, the hon. Member will surely understand that the people who were behind the formation of what I referred to as a phoney bank consulted lawyers and they did not put that money in the account of the Board. They formed a separate company, legally registered with the Registrar of Companies. They complied with the formal requirements of the Companies Act. So, it is a matter for the shareholders to raise. But, of course, it is within the mandate of the Government, that is the Ministries of Finance, Agriculture and the Attorney-General's Department, to consult on what legal redress we can extend to those who want to claim their money back.

Mr. Sambu: Mr. Speaker, Sir, could the Minister tell the House how many marketing agencies have so far been licensed? We have been seeing things in newspapers, yet we know that the new law was to come into effect, elections were to be held, and then the new Board would license marketing agencies. Could the Minister tell the House whether there are marketing agencies which have been licensed? If there are none, could he clarify this matter so that the farmers know the position? If some marketing agencies have been licensed, which are they and how long will their licences last?

Mr. Speaker: Mr. Minister, would you like to take Mr. Murungi's question as well and then respond to both questions?

The Minister for Agriculture (Dr. Godana): Yes, Mr. Speaker, Sir.

Mr. Speaker: I am afraid I will end these points of clarification with Mr. Murungi's.

Mr. Murungi: On a point of order, Mr. Speaker, Sir. I want to thank the Minister for the quite

comprehensive statement, but there is an area which we felt the statement did not adequately address.

This is what hon. Sambu has asked about; it is about the marketing agencies. We understand that there is a rush by coffee barons and vampires to register marketing agencies. We understand that some of the directors who used farmers' money to create the phoney bank have applied to be registered as marketing agencies. First, when will the coffee general rules be published? Secondly, what mechanisms is the Minister putting in place to ensure that farmers will not be ripped off by the people who have ripped them off in the past, who are now coming wearing sheep's skin as marketing agents?

The Minister for Agriculture (Dr. Godana): Mr. Speaker, Sir, I want to thank both hon. Members for raising questions which are more or less the same, but looked at from different angles. I want to make it very clear that on the basis that we are proceeding to ensure a smooth transition, we will do everything to avoid the reform process being sabotaged or hijacked from the very beginning. I am particularly concerned about the interests in the subject of marketing agents. The Coffee Act 2001 is very clear. Marketing agencies are to be appointed by the new Coffee Board, whose members will be elected in accordance with the electoral rules that have already been published.

I want to state, for the avoidance of doubt to Mr. Sambu and the rest, that as of now, we have not licensed a single marketing agent. It is true that pressure has been there. In fact, we are even getting letters from referees. I am getting all kinds of letters on my table saying that company "X" is a good company which can be trusted. But I can tell you that as of now, we have not licensed a single marketing agent. As I said, the rules are clear and the conditions that applicants will have to meet are very clear. We hope that the new Coffee Board will act with integrity when time comes to decide on who should be licensed.

But we realise, and I want to plead with hon. Members here to bear with me on this point, that at some stage, even if it will be two or three weeks, if we will not stop the process of coffee marketing for a few weeks, we will have to appoint some interim marketing agents. We are toying with the idea of appointing a very limited number of marketing agents, and we would want to do so on the basis of clearly transparent rules of fairness. I can assure you that there will be no under-the-table deals.

The reason why I say it will be necessary to have few interim marketing agents is that once the new Board comes in, it will have to receive applications, evaluate each one of them and decide whether to license X, Y, or Z. That will consume some time, and in every week, the coffee auction will have to go on. So, for two or three weeks, it will most likely be necessary to have some parallel rank between the Board and two or three marketing agents. As I said, when it comes to that decision, those marketing agents will be strictly interim. Their licences will expire the day the Board will be in a position to approve applications and they will have to apply for the substantive licences.

The conditions which will have to be fulfilled are that an applicant must have the infrastructure, financial and storage capacities and, of course, expertise. Obviously, some of the big players from the past will appear to be frontrunners. I sympathise with farmers from all over the country who would want to form their own companies to do this. Indeed, a delegation was brought to me on this issue, and I told its members that the law is very clear and it is farmers who ultimately will license marketing agents through the Board members that they will elect. It is up to farmers to ensure that they elect men and women of integrity to those Boards to avoid the same devils, whom they say destroyed the industry, from coming back through the back door. That is the minimum I can do. I cannot bar any individual or a group of individuals from being elected to the Board. That responsibility rests with farmers and the leaders, who should educate farmers when it comes to the time of elections.

Mr. Speaker: Can we go to sugar now?

Mr. Mwenje: On a point of order, Mr. Speaker, Sir. You promised to give me a chance.

Mr. Speaker: Order! Mr. Mwenje, will you sit down? Promise or no promise, there will be order here! I do realise that the coffee issue is a very important one for the lives of Kenyans, and that is why I have given it quite some time.

(Mr. Mwenje stood up in his place)

Order, Mr. Mwenje! If you behave that way, you may not even be able to be there to negotiate with me any further. So, please, stay put so that you can plead with me once I have resumed my seat. But if you become disorderly, you will not be in a position to plead at all. So, please stay put!

So, what is it, Mr. Mwenje?

Mr. Mwenje: Thank you, Mr. Speaker, Sir, for your wise and kind consideration. It is very important that some fundamental two or three issues are brought to the attention of the Minister. His Statement appears to negate the original purpose of the Coffee Act. The Bill was passed by this House and, therefore, the Minister cannot come back and say that we went against his advice because the Act is now the current law.

That being the case, it would have been wise for the Minister to suspend coffee sales. Yesterday's sale was sale No.26 and up to now, proceeds from sale No.21 have not been paid to the farmers, thus breaking the law, which

states that farmers should be paid their dues within seven days of the sale. So, how will the Minister deal with that issue?

The other important issue, as the Minister has just mentioned and admitted here, is that the past coffee barons are now the same people who are applying to be licensed as marketing agents, and pressure will rise. Could the Minister assure the House that these people will not be licensed? We know who they are and I can mention some of them by their names.

Mr. Speaker: Order!

Mr. Mwenje: Lastly, Mr. Speaker, Sir---

An hon. Member: Is there coffee in Nairobi?

Mr. Speaker: Order! Whether there is coffee in Nairobi or not, I gave Mr. Mwenje a chance. But what I will not allow in this House is for hon. Members to take over, as it were, the management of the Coffee Board from the Floor of the House, contrary to the law. The Minister has already told you, Mr. Mwenje, that not a single marketing agent has been appointed and he will not appoint any. He has said that it will be the Board that will appoint the marketing agents. We are taking up a lot of unnecessary time.

Mr. Minister, do you want to respond very quickly and we go to sugar?

Mr. Muiruri: On a point of order, Mr. Speaker, Sir.

Mr. Speaker: Order! Proceed, Mr. Minister! **The Minister for Agriculture** (Mr. Dr. Godana): Mr. Speaker, Sir, as regards the second part of Mr. Mwenje's question, I responded to it elaborately and I have nothing more useful to add.

With regard to his advice that we should suspend coffee sales, I want to state emphatically that we will not suspend them. This would be disastrous.

(Mr. Muiruri stood up in his place)

Mr. Speaker: Will you sit down, Mr. Muiruri? The Minister is responding to a point of order. Follow the rules of the House!

Mr. Muiruri: On a point of order, Mr. Speaker, Sir.

Mr. Speaker: Mr. Muiruri, you are now becoming disorderly! What is eating you up? What is your point of order?

Mr. Muiruri: On a point of order, Mr. Speaker, Sir. Is it in order for the Minister for Agriculture to tell me to sell my own coffee through the marketing agent? If I own 1,000 acres of coffee, is he in order to tie me to a marketing agent, instead of allowing me to market my own coffee?

Mr. Speaker: Order! Order, Mr. Kamolleh! I think we must distinguish between two things; your role as Member of Parliament and your role as an individual or business person! You must come to this House in one capacity and that one capacity only, and that is as a Member of Parliament. This House has neither time nor interest to adjudicate on private individuals' enterprises. You can go to court if you are displeased. So, I am sorry, Mr. Muiruri. I will neither adjudicate your private enterprises nor will the Minister. We only adjudicate on the larger interest of society, not on those of individuals. If you are part of the Kenyan society, I am sure, you are covered in the larger whole. But let us not individualize the matter.

Mr. Minister, you will not respond to issues pertaining to individuals. Proceed!

The Minister for Agriculture (Dr. Godana): Thank you, Mr. Speaker, Sir. So, I have said that we are not considering the option of suspending the sales because we think it would be disastrous for the industry in terms of destroying the confidence which outsiders have in our reliable production of coffee for the international market. Hon. Members should know that we are responsible for only about 1.2 per cent of the total coffee production in the world. Our niche in the market is based on quality production as well as reliable marketing. It will be disastrous at this stage, to suspend sales of coffee and destroy the confidence of international coffee dealers; names like Stabax of New York, who came all the way to this country the other day to give a word to the individual coffee farmers in Nyeri, Mt. Kenya Region; in the constituency of the hon. Member here. So, that is the much I have for coffee.

Mr. Speaker, Sir, I now wish to---

Mr. Mwenje: On a point of order, Mr. Speaker, Sir.

Mr. Speaker: Order! Order, Mr. Minister! Order, Mr. Mwenje! That matter is now closed!

Mr. Minister, proceed on sugar!

ESTABLISHMENT OF NEW SUGAR BOARD

The Minister for Agriculture (Dr. Godana): Mr. Speaker, Sir, I beg to give the following Ministerial Statement on sugar, which is perfectly legal.

Mr. Speaker, Sir, hon. Members will recall that when we were debating the Sugar Bill, 2001, again, against

my tenuous advice, amendments were made to that Bill on the Floor of this House in the Second Reading of the Bill and at the Committee Stage. One of those amendments dictated, uncharacteristically for Parliament, as in the case of coffee, that the Bill shall come into force on a particular date at the latest, and that date happened to be the 1st April, 2002. The Act which was passed by the House with some amendments, has serious practical problems of implementation. However, the commencement of the Act; 1st April, 2002, does not mean immediate enforcement of all the provisions relating to the sugar industry agreements referred to in Section 29 of the Act, and the Second Schedule. This is because those agreements have to be negotiated by the parties after the Board is established under the offices of the Board.

I want to repeat this: The Act that we passed provides in Section 29 of the Act for the conclusion of Sugar Industry Agreements between various stakeholders; millers, outgrowers, outgrower companies *et cetera*. Those agreements can only be negotiated after the Board has been elected by various players.

Mr. Speaker, Sir, through Legal Notice No.47 of 25th March, 2002, I have already appointed 1st April, 2002 as the commencement date; and vide Legal Notice No.48 of 27th March, 2002, published the Sugar Election Regulations, 2002, effective from 1st April, 2002. At the same time, the transitional Board of Kenya Sugar Board has been appointed for the period of 1st April to 31st May, 2002, which will, among other operational issues, oversee the electoral process of the new Board members.

Mr. Speaker, Sir, I want again to emphasize here that, in the case of sugar, we did not appoint a new Board because we were eager to avoid a lacuna; but we extended for a two-month period to mandate the same old Board. I want, at this point, to refer to the Editorial in *The People* newspaper yesterday, which I think is very ill-advised. For the avoidance of doubt, I want to state this:

That, by the very nature of complex modern governments, the Chief Executive relies on the advice of his Ministers and his officials, just like the Minister does rely on the advice of his officials; and, indeed, the same applies in the appointment or the establishment of the Board. Firstly, the Board was the same Board whose mandate we extended. The appointment was on my advice, as the Minister in charge, to the President. I take full responsibility for it. I looked at the law and said: "This is a matter on which I would wish to get his signature under the State Corporations Act. There were no considerations in my submitting that list; maybe I made a mistake. But I want to assure this House that there were no considerations in my mind about the ethnic background of any individuals on that list. In fact, it is only after I had read that editorial of *The People* Newspaper in yesterday's issue, this morning, that I decided to inquire who is Okech and who is what-have-you, and I realised that there is no region, on that basis, which has been left out.

Mr. Speaker, Sir, the provisions relating to the Sugar Industry Agreement, as specified in Section 29(1) of the Act, are to be negotiated between growers and millers, growers and outgrower institutions, and between millers and outgrowers' institutions, who have sugar-cane supply contracts with the millers. Therefore, the implementation of those provisions will be subject to negotiations between the parties to culminate in various agreements between the parties.

Mr. Speaker, Sir, the issues of weighing sugar-cane at the farm gates requires investments in mobile weigh-bridges, whose expenditure is also provided for in the budget of various milling companies which are parastatals, for the financial year and which have not been approved by the Treasury. To avoid tension between growers and millers and to promote dialogue, it is important to note that logical sequence of the implementation of the Act is undertaken by the Ministry to facilitate elections of the members of the new Kenya Sugar Board. Until that Board is replaced through the elections, the Minister cannot initiate any amendments to the Second Schedule, not until that Board is in place. We need, therefore, to implement what is possible under the present circumstances and address the issues of sugar-cane harvesting, weighing, transportation, pricing, spillage, *et cetera*. When the new Board is in place, it will give recommendations to the Minister on how to deal with the problems that we foresee.

Mr. Speaker, Sir, the current agreements under which, to date, farmers have been supplying sugar-cane to the milling companies have been entered into between growers and millers or between growers' institutions and the millers. The agreements should be implemented pending fresh negotiations to protect the interests of all parties. The need for this statement arose because hon. Dr. Kituyi wondered what was the source of authority of Mumias Sugar Company, and since then the millers have done the same; asking farmers to sign particular contracts. All the milling companies did was to tell the farmers that, in view of the provisions of the new Act, they had to negotiate new supply contracts with the growers. For the avoidance of doubt, now that those agreements are not there, we will have to wait for the Board to be elected. In the interim, we do not want business to stop. We would like you to continue to have a legal basis on which you supply us. We think the best basis is the old agreement that you had. Otherwise, on what legal basis will the farmers supply cane to the mills? There will be no legal basis. So, it was to avoid a lacuna and major problems and disputes arising in future. If the cane is not harvested on time as scheduled, it will lose sucrose content and the consequent losses will be to the growers and those who finance them to produce the cane.

There is need for transition to change from the old system to the new system and the understanding of all parties, including Members of Parliament. It is in this context that the Press statements issued by Mumias Sugar Company and other millers are relevant to avoid disruptions of the current operations of those companies. I believe

there will be no disputes. My information from the ground is that farmers have willingly rushed to sign those forms. There has been no disruption of cane supply to the mills. However, in future, disputes arising between any parties have to be arbitrated by the Sugar Arbitration Tribunal created by Section 31(1) of the Act. At the moment, various parties should be encouraged to negotiate their agreements within the two months' transition period. There are other issues which will require a longer time frame to implement, for example, the payment of cane on sucrose content as laboratories have to be established, and competent staff recruited and trained. The cash outlay for this investment is presently not budgeted for and could be on account of poor sales volumes. This could be out of reach of some of these companies for quite a while.

Mr. Speaker: Very well, I will give a chance to Mr. Sungu, Dr. Omamo, Mr. Sambu and Dr. Ochuodho. Could I begin with Dr. Ochuodho?

Dr. Ochuodho: Thank you, Mr. Speaker, Sir. I think it is a dangerous---

Mr. Speaker: Order, hon. Members! First of all, I would like to bring to the attention of hon. Members that a Ministerial Statement is not a basis or a foundation for a debate. What you are seeking from me is to allow you to seek clarification from the Minister on what he has said. So, seek clarification. I urge all hon. Members I have recognised to be mindful of time and be precise!

Proceed, Dr. Ochuodho!

Dr. Ochuodho: Thank you, Mr. Speaker, Sir. There is a dangerous precedent that emerges. This is whereby Ministers on the other side of the House do not seem to respect the institution of Parliament. Parliament enacts laws, but through the backdoor, the Ministers find a way of frustrating those laws. The Sugar Act is one perfect example. But the same seems to be the case with coffee as well. The Chief Executive Officers of the major sugar companies---

Mr. Speaker: Dr. Ochuodho, seek clarification from what the Minister said! It is not debating time!

Dr. Ochuodho: Mr. Speaker, Sir, the clarification I am trying to seek is, first, the Minister has said that the farmers have rushed to fill the forms. I would like to inform him that this is not the case. The farmers are forced to do that or are intimidated and they do not have a choice. Since the Sugar Act says that there is a manner in which the appointment should be done, in a situation where we know that there is no respect for institutions, including the one of the Minister, whereby you find that the Head of State appoints officers, who should be appointed by the Minister--- Why did the Ministry not even consider, in such situations, relying on farmers who are mandated by the Act to appoint--- Even in the case of the transitional Board, why did the Minister not allow the farmers to elect the people to sit on this Board instead of the Head of State?

Mr. Speaker: Very well! Could you, please, take notes and respond to all those issues?

Proceed, Mr. Sungu and be precise!

Mr. Sungu: Thank you, Mr. Speaker, Sir. My clarification will be quite short. The duty of Parliament, the Minister, the Government and hon. Members of Parliament is to protect the poor powerless farmers. In his statement, the Minister seems to side with the big factory owners rather than the farmers. There seems to be blackmail in this local agreement because the farmers have no choice. The farmers do not have a factory to go to. I would like the Minister to clarify that aspect and tell us exactly what kind of protection he will offer the farmers in view of the fact that they are being forced to sign the forms now?

Dr. Omamo: Mr. Speaker, Sir, I would like the Minister to clarify the electoral areas which are being proposed. To give an example of the Nyanza area, the SONY zone is one representative. Muhoroni "jumps" over Chemelil Sugar Company zone to be linked with Miwani to elect one member. Chemelil "jumps" over Muhoroni Sugar Company zone to be linked with Soini zone to elect another member. In the Chemelil zone, there is Chemelil, Soini and another area known as Nandi. While we were of the opinion that he was talking about factory areas, he instead brings the idea of a district zone. The manner in which he has presented the zones in Nandi, Nyando and South Nyanza sugar belts, is driving the growers to think in a tribalistic manner, which should not be allowed.

Mr. Sambu: Mr. Speaker, Sir, would the Minister clarify as to whether he concurs with the statements put in the Press by the management, particularly the Managing Director of Mumias Sugar Company? This is because from the statement, it is apparent that the management of Mumias Sugar Company does not intend to comply with the new law. Could the Minister state whether he thinks that the management of Mumias Sugar Company has a right to state what it stated?

The Minister for Agriculture (Dr. Godana): Mr. Speaker, Sir, I thank the hon. Members for seeking these clarifications. I think I dealt exhaustively with the last clarification sought by Mr. Sambu. I said that I am satisfied that the milling companies or sugar mills, Mumias included, are motivated by a desire to ensure there is no disruption to sugar production and there will be no unnecessary disputes which will cause problems in future. So, I am not aware of any intention on their part to disobey the law. They are trying to do the best within the law.

As regards the inquiry from Dr. Ochuodho, as to why we did not appoint an interim Board of farmers, I would like to say that there was no provision in the law, and I did not want to open up a can of worms by devising interim elections to the Board. This is because that is what it would be tantamount to. I also said that to avoid unnecessary misunderstanding, the safest thing is to extend by two months the authority of the existing Board.

The question raised by Dr. Omamo about the electoral areas does confirm the fears which I expressed here. I think we have ran into a problem. In this case and in many cases, we run into problems because we are beginning to adopt a momentary approach or tendency to make a monumental decision on the spur of the moment. The draft Bill which was brought to this House was negotiated and discussed in numerous stakeholder consultations in Kisumu, Kakamega, Nyeri and Nairobi through the Committee of the House and what have you. A lot of painstaking time, hours and reflections went into designing those proposals. That does not mean it is God-given and cannot be changed. But I think when it comes to making changes on the Floor of the House, surely, we should avoid the tendency to make spurious amendments. I think that is what happened and that is how we ended up with some of these problems.

For instance, "zones" were defined in the original draft which we brought to the House as "approximately 40 kilometres". The purpose was to say when you are setting up a new factory, avoid overlapping and unnecessary competition. We wanted to give some kind of guidance and that is why we used the word "approximately". I remember that word was in italics in that draft to emphasise the fact that where, indeed, you have no factory approaching on this side, you can go as far as you want to get cane from the farmers. Hon. Members amended it to read "a maximum" of 40 kilometres. This means all the sugar-cane producers in Busia are not covered in the Board and they will not be voting. All the sugar-cane producers in Trans Mara District are not covered and will not vote because they are excluded from the Board. Many sugar-cane producers from the Nandi Escarpment will be outside the reach of the Board. This was an amendment proposed by Mr. Sambu, on behalf of the Committee. I wonder whether hon. Members reflected on these things at that time. This is the net consequences that we are telling people. Indeed, already Mumias Sugar Company is asking whether in that case they are bound to receive sugar-cane from Busia District. Of course, they are not bound. Sony Sugar Company is not bound to receive sugar-cane from Trans Mara District. That is why I said hon. Members moved spurious amendments by changing that one word against the advice of the Minister. That is the problem they have landed us into. That is why I feel we have to come back and solve these problems. I am pleading for understanding from hon. Members from those zones.

Mr. Speaker, Sir, on the issue raised by Dr. Omamo, I say this with tremendous respect, although it is hon. Members of the House from the Nyanza Sugar belt who pushed for the change of the formula of the composition of the Board, again, against my advice. The fact of the matter is that according to the formula that you have been told now, majority of representation will go to Western Kenya. There is nothing I can do about that. So, we have to combine some of those areas and end up with one or two zones. I advised on what was right, but hon. Members felt they knew better, and on the spur of the moment they made those changes. Unless we come back to the House, we cannot make further changes.

Mr. Speaker, Sir, finally, I want to make this plea to hon. Members from the sugar belt; it is important to remember the origins of the sugar industry in this country. It did not develop on the basis of commercial interest or on the basis of calculated profits by would-be investors. We would be a very uncompetitive sugar producer and the investors knew that. We did not have any special advantage like Mauritius and Sudan. Those investors did not come here of their own, but Government made a deliberate policy decision because Western and Nyanza provinces have, perhaps, the bulk of this country's population, or a large chunk of the population, and yet industries were not being set up there. It is important for the Government to take the lead and take industries there. There was a social objective to create employment and cash income. That was the reason behind the development of the sugar industries in those areas. If we, therefore, say it is us to control them, I have no doubt those few investors who the Government cajoled to come in by guaranteeing loans, will not be compelled to continue staying. I think it is important that we take these things into account when we take positions on some of these matters. As I said, the sugar rules have already been taken to the office of the Attorney-General and they will not come out tomorrow unless the Attorney-General's department feels they have to make certain changes. We were quite satisfied, in the circumstances, that we had drafted rules as good as they could be in the context of the problems that have become permanent hurdles in the implementation of this Act. But it is my hope that we will be able to consult together and agree on solving those problems. I hope we will come back to this House in the shortest time possible so that we can assist our farmers.

Mr. Speaker: Very well. That ends statements on coffee and sugar.

PERSONAL STATEMENT

MALICIOUS REPORTING BY KTN

The Minister of State, Office of the President (Mr. ole Ntimama): Mr. Speaker, Sir, thank you for allowing me to make a personal statement. I was contributing to the debate on the establishment of the Commission on Human Rights yesterday. Well, I talked about various things. However, when I went to my house, the presenter of KTN news said: "Mr. ole Ntimama told Parliament that three-quarters of his Cabinet colleagues are criminals and they must be removed." I have got a copy of the HANSARD. I thank the Clerk because I asked for this copy of the HANSARD report as early as 8.00 a.m. I have been reading it through all this time until this afternoon, and I have not come across

a statement where I said three-quarters of my Cabinet colleagues are criminals. This is a very malicious statement by the KTN. I cannot, but start guessing and suspecting that the presenter must have been compromised.

Mr. Speaker, Sir, this was a malicious statement with malignant intent. Normally, I do not want to swallow the words that I have said although sometimes they are not palatable. But normally, I never swallow them. But I feel very infuriated if somebody tries to put words in my mouths that I did not say.

Mr. Speaker: Very well. I can understand your anger, Mr. Ntimama, but can I also prevail upon you not to hit them so hard?

Anyway, I would like to reiterate what I have said in the past. Members of the Press are a very essential component of our deliberations here, but they must do what the House wants them to do, and that is to report accurately and fairly. Whatever opinions you have, please, do not ascribe them to a Member of this House until that Member has said it. I am sure hon. Members will join me in cautioning the Press against misreporting hon. Members. So, please, do not misreport hon. Members. Say what they have said because I have the record to show what they said in this House

(Mr. Mwenje stood up in his place)

Mr. Mwenje, what is it? You never asked me to give you a chance to ask for anything.

POINT OF ORDER

GRABBING OF CITY PARK

Mr. Mwenje: Mr. Speaker, Sir, I did ask you for this chance to seek a Ministerial statement from the Minister of Environment and Natural Resources on City Park. We would like him to tell us about this hullabaloo and the Press statement about the City Park. We are aware that some people are about to grab it. This is the only park within the City where our people rest in the afternoon. We are aware that some surveyors have been trying to survey it so that it can be subdivided and given to individuals. Although the Minister is not here, this is a very serious matter and I would urge the Government to do something about it before we see clashes like in Karura Forest--

Mr. Speaker: Order! Do you know what clashes are? They are very deadly and I will not allow you to advocate them on the Floor of the House. So, will you withdraw that remark?

Mr. Mwenje: Mr. Speaker, Sir, I did not mean clashes; I meant the normal "collision" where one would say: "I am taking it", and others say: "You will not take it". That is the kind of things I am talking about. Not the clashes that hit Molo and other parts of the country in 1992 and 1997.

Now that the Deputy Leader of Government Business is here, I hope he will convey to the Minister that we need to know the exact position of City Park. Let them know that we will not let this park go to anybody or be dished out to some private developers.

Mr. Speaker: Order! I have said it in the past, that Ministerial Statements are not supposed to replace Questions. Mr. Mwenje, although I will ask the Minister to respond, I would like to ask hon. Members to put Questions, where Ministers will be bound to come and give answers. It is, in fact, encouraging laziness on my part if I were to allow hon. Members to replace Question Time with Ministerial Statements. Question Time gives you time to ask questions, but the other one does not. I will ask the Minister to respond, if he is there.

Next Order.

BILLS

First Reading

THE CONSTITUTION OF KENYA (AMENDMENT) BILL

*(Order for First Reading read - Read the First Time -
Ordered to be read the Second Time tomorrow)*

Second Reading

THE KENYA NATIONAL COMMISSION ON HUMAN RIGHTS BILL

(The Attorney-General on 3.4.2002)

(Resumption of Debate interrupted on 9.4.2002)

Mr. Speaker: You were on the Floor, Mr. Kihoro! You have 20 more minutes.

Mr. Kihoro: Mr. Speaker, Sir, yesterday, I had given a long list of human rights organizations which have been working for about 39 years in this country, to compel the Attorney-General to propose this Bill. I gave that list as one of the documents I laid on the Table to support my submission. I also talked about how some police officers in my constituency have run amok. They have victimised very many people including market women, students and villagers. This is something that needs to be sorted out as quickly as possible. I also stated that the Kiganjo Police Training College is in my constituency, but unfortunately, when the police run amok in Nyeri Town, everybody in Kenya knows. We thought in Nyeri Town police officers get the best training in order to respect the human rights of other people.

I have been looking at the proposed Bill, and in Clause 3, I find that the Standing Committee on Human Rights, which has been in operation from 1996, is going to cease and the new Commission will take over as soon as the Bill is enacted by this Parliament. I have not, over a period of seven years, seen a single report that has come from the Standing Committee on Human Rights. I always wonder why people who do not want to do a job embark on the process of committing themselves to do a job that they cannot do. They have not been in the system or had their rights violated, and maybe that is why they cannot do the job. There should be an accepted rule in this country, that somebody can also retire from the Public Service with honour. Unfortunately, over a period of seven years, the Standing Committee on Human Rights must have put their hands and fingers in the Consolidated Fund, and yet what comes from that end is absolutely nothing.

Mr. Speaker, Sir, Clause 6 is with regard to the nomination of the Commissioners who are going to sit on this Commission. I find that out of the 12 Commissioners who are going to be shortlisted, there is no direct reference to at least four of these Commissioners being women. It is important that when this Commission becomes operational with the six Commissioners, at least two should be women, in accordance with Clause 33 of the Constitution. I believe, maybe, women respect human rights better than men. It is important to have this balance so that we do not have a macho Commission where issues are dismissed. I believe women will be more meticulous in terms of respecting human rights of their sons, daughters and husbands.

Mr. Speaker, Sir, Clause 16 is about the visits that can be done by the Commissioners when it is set up. They are supposed to visit the prisons. I wish it had been set up when I was in prison. I might have had an opportunity of meeting them. I am hoping that they are also going to visit remand homes in this country, where people who have not been convicted in a court of law have spent years. This is tragic. The Constitution guarantees every Kenyan the right to a fair trial and the presumption of innocence and yet in this country we still have people spending years in remand homes. For example, there was a case in Nyeri where somebody was in prison for 18 years, and was never convicted by a court of law. It is, therefore, very important that when this Commission is set up, it will be able to visit the prisons in this country.

Mr. Speaker, Sir, that brings me to Clause 27 of the Constitution which is about the prerogative of mercy. According to Clause 32(c) which is proposed in this Bill, a matter relating to the exercise of the prerogative of mercy will not come under the purview of the Commission. According to Section 27 of the Kenya Constitution, it is only the President who may be able to grant a pardon which can be lawful. I am surprised even a convicted criminal can be allowed to walk out of our prisons by the President. According to Clause 32(d), this Commission that is set up will not be able to review the operation over the prerogative of mercy. I hope that is an oversight, but now that it is there, I am proposing to the Attorney-General that this Commission should have the opportunity of looking at all aspects that relate to the exercise of the prerogative of mercy. I believe that people who are seeking mercy from other human beings, most likely are people who have been sentenced to death. Who else needs our mercy more than that person who has been sentenced to death? Kenya still remains a hanging State. It is important for this Commission to have the opportunity to receive any petition or application from anybody who could be serving a death sentence.

Mr. Speaker, Sir, I wonder how many people have been injured on the streets by the police officers and have been left without any compensation. Some of them have been incapacitated and they need some nursing and care. But they do not have it. It is very important to establish - this is one of the areas this Commission must expand into - a criminal injuries compensation scheme. How can we leave our people without any remedy, especially in cases where there is no insurance involved, and maybe the man of straw is the one who has injured somebody, and a person is left without any remedy? It is important to establish that fund in order to assist such people who could be incapacitated or need nursing and care.

Mr. Speaker, Sir, police officers have become a great danger to Kenyans than what the ordinary Kenyans are to themselves. Under Clause 19(2)(b), the Commission can award compensation. I am wondering where this money will come from. I do not expect that the Commission is going to give compensation to people, who have become such offenders of our rights, to go free. I am proposing that the Commission must be given "teeth". Where there has been

blatant violation of the rights of an individual and, maybe, where the offender has been able to make some profit out of such an infringement, the Commission should have the power to confiscate any property and, maybe, restore that property to the person from whom it has been taken away after a crime has been committed. If there is no better claim, that property should be taken over by the Government. I am thinking about any public official who will go out of his way to infringe human rights of other Kenyans.

In this Bill, there should also be a provision for surcharge to be made against such an individual. That might turn out to be the only deterrent because when you hit some people in the pockets, they appear to come to life immediately! But if you say it is only a matter where somebody will be given compensation, they will say, "we are not involved", and they will continue with their bad practices. So, it is important that a surcharge should be levied against an individual in Public Service, where there is a clear-cut decision on his part to violate the human rights of other people. It is also important to give the Commission the power to interdict some public servants, especially policemen, if it becomes clear that they are acting outside the Police Standing Orders on discipline, like the cases that have come up so frequently. So, it is important for the Commission to have the power to interdict, suspend and even terminate their jobs! We have seen how many officers are now going on tour from one police station to another, violating the rights of Kenyans and their services are never terminated. They continue infringing peoples' rights and working against the best interests of Kenyans in respect of human rights. So, it is important for the Commission to have the power to terminate the services of some of those very incorrigible policemen. I believe that, maybe, 95 per cent of the policemen in this country are law-abiding, want to enforce the law and they are not corrupt. But the remaining 5 per cent, that has given a bad name to the police force in this country, should be disciplined. We could terminate the services of some of them and I am telling you that I will never mourn about that.

We should also establish a Police Service Commission, so that even before those infringements are committed, it would be possible for action to be taken. We do not want to be in a position where we always act after the fact. We want to be able to pre-empt some of those infringements of human rights before they occur. So, it is important to establish a Police Service Commission where, maybe, the promotion of policemen will go back to what it used to be; where they would be promoted on merit, and not on the number of legs or hands one has broken! We want a professional police force in this country and I believe, eventually, that is the only guarantee that we will have; that the work will be done properly and there will be less infringement of human rights. Then, the Commission that we are going to set up, as proposed by the Bill, will be able to work. If they are going to be overloaded with work to the extent that the Commission might even do the work of the policemen, there is no way it can be able to work. So, it is important to have the Police Service Commission, where the 95 per cent of the policemen with high integrity, and would like to do their jobs properly, could be able to operate.

Mr. Speaker, Sir, as I go towards the end, I am thinking about some of those people who have had their human rights violated. Under Subsection 2(a) of Clause 19 of the Bill, the Commission can order the release of a detained or restricted person. I thought we have passed the days and age when we used to have people detained in this country. But now, the Commission is being given power to un-detain and to order the freedom of somebody who could be restricted. By the way, the last person who was restricted in this country was the late Jaramogi Oginga Odinga, in 1982. It is very important that the Commission should be able to look at some of those cases that have come up previously.

With those few remarks, I beg to support the Bill.

Mr. Muite: Mr. Speaker, Sir, I would like to, at the very outset, say that this Bill is certainly a step in the right direction, in terms of strengthening our fledgling democracy. But having said that, I would, first of all, want to emphasise the dichotomy between what we say in our laws and what we practise as a country. There is a very wide gap between very good provisions in the law and what we do as a nation. So, let us not be fascinated with Bills like this one, which are well-intentioned, if there is not going to be political will to implement the letter and the spirit of what we are enacting.

As we stand here, even prior to the enactment of this Bill, the law, for example, prescribes how the police should effect an arrest of a citizen. The rationale behind the regulations relating to how a citizen should be arrested is the recognition of the respect of the dignity of a human being. Human respect and dignity is one of the human rights which are already in our Constitution. Every person is entitled to respect to human dignity, which is why the law goes to very minute details in setting out how a citizen should be arrested without violating that dignity. That is why the law requires a police officer who wishes to arrest a citizen to go up to the citizen, place his right hand on the left shoulder of the citizen being arrested, and then inform the person that he is under arrest and give the reasons. That is an arrest that accords dignity. It recognises respect for the person who is being arrested and who, after all, at that point in time, is still being presumed to be innocent.

Mr. Speaker, Sir, it is only if that citizen resists arrest, when the police officer is then permitted by the law to use force. Who can remember, in this country, one incident where the police have complied with that requirement of the law? Who can remember any police officer walking politely even to a Member of Parliament and placing his right hand on the left shoulder---

Mr. Speaker, Sir, when they are arresting Mr. Mwenje, the first thing he knows that he is being arrested is when he is being lifted up in the skies by about ten police officers. They are violating the law! They should march up to Mr. Mwenje, who is the Member for Embakasi, and one officer should politely place his right hand on the left shoulder of Mr. Mwenje and say: "You Member for Embakasi, you are under arrest for the offence of incitement." It is only if the Member for Embakasi resists arrest, that they should use force.

Mr. Speaker: Mr. Mwenje, are you not objecting to be used as an example?

Mr. Muite: That is what they do, Mr. Speaker, Sir!

Mr. Mwenje: I am very happy to be used as an example!

(Laughter)

Mr. Speaker, Sir, I wish it was possible for you to witness how your Members of Parliament are actually arrested. The other day, when they were arresting Mr. Orenge in Kisii, he told us they were almost killed. The police were very rough, it is unbelievable. A good example is the violence that was meted out on the air traffic controllers recently. Among the rights enshrined in our Constitution is the freedom of assembly and expression. Here were Kenyans who had assembled at Uhuru Park to articulate about their terms and conditions of service. They were not violent and yet how were they arrested? I do not know whether you saw the scene on the KTN and Nation televisions. The first thing that the police normally do when they arrive on such a scene is to throw teargas canisters. The whole place is engulfed with teargas. They also come armed with *rungus* like thugs and start beating up people. They then start loading people very roughly onto lorries. When people are loading a sack of potatoes onto a lorry, that sack is treated more gently than a human being who is being loaded onto these vehicles by the police.

If we cannot respect the current law, what expectations can we have that the police in this country will respect the laws we are enacting? Let us make a start by respecting the current provisions. Section 72 of the Constitution requires that if a suspect is arrested, he must be taken to court within 24 hours so that he can be charged and apply for bail. How many times do we see the police respecting that? They normally hold people in custody indefinitely. In fact these air traffic controllers who were arrested on Monday are still in custody. There is a culture of violation of the law by the police in this country. If we are to enact this law can we ask this Government to start by developing the culture of respecting the letter and spirit of the law? The whole basis of these laws is recognition of the dignity of the human being. When you are arresting them, even if they are criminals, they do not cease to be human beings. Even those who are in Kamiti Prison are still human beings. They should be treated in a humane manner in accordance with the dignity that a human being should have.

I hope that, when we set up this Commission, the Commissioners will bear these sentiments in mind. If I may specifically point out a few matters. Clause 10 which is on page 11, is a clause that concerns me. The marginal note says: "Terms and conditions of service of the Chairperson and Commissioners". It provides that the salaries and allowances payable to and other terms and conditions of service of the Chairperson and the Commissioners shall be such as may be determined by the Commission in consultation with the Treasury. I would appeal to the Attorney-General to bring amendments.

*[Mr. Speaker left the Chair]
[The Temporary Deputy Speaker
(Dr. Anangwe) took the Chair]*

First and foremost, we are abdicating our responsibility as the National Assembly. We are creating yet another loophole. This is a power that we cannot leave to the Treasury. It will be abused and they will just sit around. They have been told by the Treasury that provided they toe the line, they can improve their emoluments. These are very general terms and conditions of service. They will be promised four-wheel drive vehicles. Whoever pays the piper calls the tune. If we are trying to create an independent Commission it is a contradictory term to then provide in this Bill that, that Commission, which we seek to give independence to will be obliged to negotiate its terms and conditions of emoluments with the Executive arm of the Government. The Commission will not be independent. I said this when we were setting up the Ghai Commission that it was dangerous to have a situation where that Commission would negotiate their emoluments and terms and conditions of service with the Executive.

I do not need to go into what subsequently happened in history regarding the Ghai Commission, but let us learn from history. Let us not create another "white elephant". If we truly want this Commission to be effective in checking or promoting respect for human rights in this country, we need to give it autonomy. There can be no autonomy without financial autonomy. If you are going to make this Commission dependent of the Executive, because the Treasury is part of the Executive, then I am afraid we are wasting our time and efforts in pretending to be creating an independent Commission here. Let this Parliament fix the terms and conditions. Let the Attorney-General tell us what he thinks is reasonable remuneration for these Commissioners including the chairman so that we can pass it.

The salaries of the judges of the High Court and the Court of Appeal are fixed. The Executive brings their recommendations to this House and we sanction them. That is what we want to do with regard to this Commission. In fact, I do not know why they are not doing that. When you look at Clause 6(8), which is on page nine, you will find that the Attorney-General recommends that the chairperson shall enjoy the status of a judge of the Court of Appeal and a Commissioner shall enjoy the status of a judge of the High Court. This is a very elevated commission. If we say that the chairperson will enjoy the status of a judge of the Court of Appeal, why do we not go further and say he will be in receipt of the same remuneration as a judge of the Court of Appeal? We should also say that the Commissioners will also enjoy the same terms and conditions of the judge of the High Court instead of creating a loophole.

We have got another loophole called the Kenya Law Reform Commission. Nobody knows what they do or how much they are paid. They are a drain on the Exchequer. Their salaries are fixed without the knowledge of this Parliament and yet we are supposed to be the check on the expenditure of public money. We cannot allow this sort of loophole for two reasons. One, it can be abused to seek very high remunerations and other terms and conditions of service by these Commissioners. More importantly, if the Treasury co-operates in giving them a lot of money then they will be answerable to the Treasury. They will bend to the will of the Treasury. They will be influenced by the Treasury and, therefore, by the Executive. The only way we can give them autonomy and make them effective is by making them financially independent. They will be bringing the budget of their expenditure here. This is what the Bill requires. If they will be bringing the annual budget of their expenditure here which will be chargeable to the Consolidated Fund; if the money that they will need to pay their staff salaries, rent, telephone bills and other expenditure will come in the form of a budget which will be presented to Parliament, why do you want to draw a distinction between that expenditure and their terms and conditions of service? Let their terms and conditions of service be part of that budget that they will bring to this House so that we can sanction it and then we can operate properly.

Mr. Temporary Deputy Speaker, Sir, one other technical thing I would like to bring out is that, the Commission, in Clause 19, is given powers to commit persons to prison for contempt of its orders. This House has been accused a number of times of not scrutinising Bills to see whether they are consonant with the Constitution. I would like to draw the attention of the Attorney-General that Clause 19, Subclause 1 (D), appears to me to be in conflict with Section 72 (1) (B) of the Kenya Constitution. First of all, because in the Constitution, it is only the High Court which is given powers to commit people for contempt of court. It is also the High Court which is given powers to send people to prison for contempt of other orders made by inferior courts like magistrate courts and other tribunals.

In other words, if a person is in contempt of the order of a magistrate which is the lower court or another quasi-judicial tribunal, one is required in terms of Section 72 of the Constitution to go to the High Court because it is the High Court that upholds the authority of these tribunals and the lower courts by punishing people for contempt. Kenya, as a nation, is behind time as far as this law relating to contempt of court is concerned. In the developed countries including England where it is very rare to see the High Court abusing its power to commit one for contempt, it has been held and argued that this power is incompatible and in contradiction with the principles of a democratic state.

Mr. Temporary Deputy Speaker, Sir, when you look at Section 77 of our Constitution, it states:-
"You cannot be sent to prison except for an offence which is prescribed in a written law and the sentence of which is actually prescribed in law".

The only proviso is with regard to the contempt, but in recognition of the danger of this power being used arbitrarily by the court, that power to punish for contempt is reserved for the High Court. So, when one is in contempt, of quasi-judicial tribunals and the lower courts, one goes to the High Court for it to punish that person and, thereby, uphold the authority of these lower courts.

Mr. Temporary Deputy Speaker, Sir, now to give this Commission the powers to commit one for contempt - when truly this Commission is not a court, appears to me to be a rather brazen breach or violation of the constitutional provisions. I would ask the Attorney-General to address his mind to that issue because we do not want somebody to go to court tomorrow and start arguing that this Act is unconstitutional after we have enacted it.

Clause 19 states that:-

"The Commission will have the powers of court".

However, courts are created by the Constitution. You cannot create other courts through an Act of Parliament. There is a chapter here creating the High Court and the subordinate courts. So, clearly this Commission cannot according to constitutional law, really be a court within the meaning of that term in our Constitution. So, you cannot give the Commission these powers and say that they will have the powers of court because you are not creating courts.

Mr. Temporary Deputy Speaker, Sir, the other point I would like to make is that, when this Commission is constituted, I would recommend very strongly that when it enacts its own rules or procedure on how it is going to go about its own business, that it undertakes public hearings in various parts of the country. It is not good enough for it to investigate quietly matters of public importance when there are violations of human rights. Let it conduct public hearings. Let it announce and publicise that it will be in Kisumu or Narok in a particular week and invite the people from that area to go and present their complaints regarding human rights violation. When are some of the people in

places like Narok going to present complaints which will be conceptualised in this Act? Let the Commission go there and listen to these people and go all over the country. Let it look for work. Let it sensitise the people that: "Here is a new body that will stand as a custodian to prevent violations of your laws". So, let it not just wait for complaints to be made by lawyers and the elite here. Let us see it in various parts of the country and hold public hearings about these violations.

Mr. Temporary Deputy Speaker, Sir, the next point I would like to make is that I was very, very happy when I was reading the commencement date of this Bill and I saw in Clause 4, a section entitled "Membership of the Commission" which states:-

"The Commission shall consist of a Chairperson and seven other Commissioners nominated by the National Assembly and appointed by the President in accordance with Section 6."

Hon. Murungi has already pointed out the contradictions between this clause and Clause 8 where what is vested in Parliament here is taken here away by Clause 8. The reason why I was happy is that if truly the criteria for qualifications in terms of integrity, track record and knowledge about human rights are considered--- If there were to be applications addressed to the Clerk of the National Assembly who was to sit with the Legal Committee of the House to go through these applications and short-list for this august House some 15 names, we would be able, out of those 15 names, to pick on seven or eight Commissioners. It is highly unlikely that we will allow any person with some dubious track record to be appointed. We will look for merit.

Mr. Temporary Deputy Speaker, Sir, you will remember our arguments even when we were debating how to nominate Members to the East African Legislative Assembly and some of us were arguing that there is added value even if KANU was to be told that out of these 15 positions we are going to give them three positions. We were arguing that KANU should be required to bring 15 people and three people for each position since, I think, they had five positions reserved for them. We were arguing that KANU should bring 15 people or three people for each of the five slots. This is because KANU would know that although the House, as a whole House, was voting for these 15 people in order to pick out five and if KANU brings people with dubious records, they were unlikely to get majority support from this House. So, I am saying that when the House is voting on a name, it will shed off partisan considerations and look purely at the merits. I would urge the Attorney-General to delete Clause 8 which is now taking away what is given in Clause 4. Clause 6, Subclause 3 on page 8, is where Parliament is now forgotten. Clause 4 talks about the Commissioners being vetted and nominated by Parliament.

Mr. Temporary Deputy Speaker, Sir, Clause 4 talks about the Commissioners being vetted by Parliament. But when you come to Clause 6(3), all that is forgotten and the Attorney-General says that it will be the Speaker, the Chief Justice and the Attorney-General. First of all, I do not know why there is discrimination with regard to the Speaker in Clause 6(3). Part "b" says: "The Chief Justice or his nominee." I suppose the rationale there is that the Chief Justice is a very busy person and he may not be available when this Commission is sitting. Part "c" also recognises that the Attorney-General may be a very busy person, so it says; "The Attorney-General or his nominee". But when you come to part "a", it is the Speaker of the National Assembly. The assumption here is that the Speaker has got all the time in the world. He has got nothing else to do, so he must attend personally, while the Attorney-General is too busy and, therefore, he can send his nominee. Even if the Attorney-General was to retain Subclause 3, let him equate the Speaker of the National Assembly with the Attorney-General and with the Chief Justice. I would say in terms of protocol, at least, when we are in this House, the Attorney-General falls under the authority of the Speaker. So, he should not sort of pretend that he is more busy than Mr. Speaker. But I would love a situation where Subclause 3 is deleted so that these Commissioners are appointed in accordance with Clause 4 by this House.

Mr. Temporary Deputy Speaker, Sir, I would like to urge very strongly that we enact this Bill, tighten the issues relating to the finances and that the Attorney-General makes sure that this law is not in conflict with other laws. There is this power given to the Commission to require any person to disclose any information within such person's knowledge relevant to any investigations by the Commission. This does not appear to have been harmonised by the other Act of Parliament called the Evidence Act, that gives right to individuals not to make any incriminating statements. When the Commission will try to implement some of these provisions, they will be met with legal objections on the basis that the Evidence Act is being violated. There is a requirement to produce documents here. What about the Advocates Act? One would wish to see these issues harmonised so that, at least, there is a clause saying "Notwithstanding the provisions of this section in the Advocates Act" and "Notwithstanding the provisions of this section in the Evidence Act", so that these conflicts are removed.

Finally, Mr. Temporary Deputy Speaker, Sir, Clause 2 defines human rights. I concede that this Commission has to do only with the technical aspect of the fundamental rights like the freedom of association, the liberty of the citizens, prohibition against torture, degrading and inhuman treatment. All those sort of things are what this Commission will deal with. The Constitution is very elaborate on those issues. But truly, has time not come also for us to address the issue as to whether human rights relate only to these other things about the freedom of assembly, the freedom of speech, degrading treatment and so on? Are those people who are living in the slums enjoying human rights? Are they living in dignity? It says: "No person shall be subjected to degrading or inhuman treatment". It does

not say who will subject this person to inhuman treatment. In this case, it is the State. When you look at these street children, are they not being subjected to degrading and inhuman conditions because of the way they live?

Mr. Temporary Deputy Speaker, Sir, when we talk about human rights, and we are now even going to appoint a Commission to look into the enhancement, protection and promotion of human rights, what about economic rights? What dignity does a person who cannot have a roof under his head and who cannot have access to affordable healthcare have? Are these people not having any right? Even as we enact this, let us address our minds, as a nation and as a Parliament, to the other even more fundamental human rights. It is a human right of every Kenyan to have three square meals in a day and not to live in hunger. Somebody who cannot afford adequate food is not living in dignity. He is not enjoying his human rights. Even those who do not have jobs are not enjoying their human rights. Let us address that wider aspect.

With those few remarks, I beg to support.

Mr. Mbitiru: Thank you, Mr. Temporary Deputy Speaker, Sir, for giving me a chance to contribute to a very important Bill that deals with the dignity of the people of this country. All of us as Kenyans have the right to all forms of freedom that are enshrined in the International Convention on Human Rights.

Mr. Temporary Deputy Speaker, Sir, maybe the best thing to do is to look at the genesis or the source of human rights abuse in this country. First of all, the people who are responsible for the enforcement of the laws that we are talking about are the same people who abuse them. We have so many laws in this country that are supposed to safeguard the rights of our citizens, but when you look at the Police Force, when it comes to issues that touch on rights of assembly, association and freedom of speech, you will find that they require training. The Bill that we are discussing today does not address the issue of training of that institution that is bestowed with the power to protect all the citizens. I believe our Police Force needs special training. They need to be trained adequately so that they can be able to understand the scope of human rights.

Mr. Temporary Deputy Speaker, Sir, on the same note, it is worth noting that our Police Force is poorly paid and as such might not execute its duties as expected. They are not motivated to do their work and whatever they do, they do it because they have been instructed. We have the example of the air traffic controllers who have been dismissed from service. Why were they being dispersed? Did they not have a right to assemble? Did the police ask themselves whether those people were violating any law in the land? These are some of the things that the police need to be trained on. I think the scope of the police training must be changed. It is high time the Attorney-General brought into this House a Bill that will articulate and categorically state which areas the police officers must be trained in so that they can be able to enforce the law. I believe that would be a very important starting point in the Police Force so as to understand the scope and importance of human rights.

Mr. Temporary Deputy Speaker, Sir, the other area that I would like to touch on relates to our courts. I believe even the judges and magistrates are also human beings. In fact, the magistrates and judges should be able to see whether suspects have been tortured or not. Some of these complaints are so obvious that even the magistrates and judges can see them. It is sad that the people who are bestowed with authority to protect our human rights are the same people who abuse them. That is why we are saying that prisons are supposed to be rehabilitation or corrective centres and not punishment centres. So, it is important that whoever is appointed a judge or a magistrate familiarises himself or herself with the prevailing conditions in prisons. Even if they do not spend a night in prison, it is good for them to see the nature of prison cells. It is good for them to know the circumstances under which these people live in prisons. Inmates sometimes go without food or blankets with which to cover themselves at night. The sanitary conditions in Kenyan prisons are pathetic. People in the legal fraternity call themselves learned friends, and yet they do not bother to find out how the people they send to jail survive in there.

Even if people are under the prison authorities, they need medical attention, proper nourishment and counselling, so that they can reform. Do our prisons provide counselling services? Does this Bill address that factor? That is a very important aspect of our entire rehabilitation process. People are not sent to prison to rot and die; they are sent there, so that they can be rehabilitated and become good citizens. If we cannot justify that aspect, then we are not addressing the issues at hand appropriately. Therefore, magistrates, even if they are not going to spend a night in prison cells, must familiarise themselves with the conditions in our prisons. That way, if an accused person asks for a bond, magistrates will have no reason to subject him or her to incarceration.

As Mr. Muite said, the air traffic controllers who were arrested on Monday are still rotting in police cells, and yet the alleged offence is bailable. These people were struggling for their rights, and yet they have been made to suffer in cold police cells without food, water or proper sanitation. Why do they have to be subjected to this kind of treatment? Is it because of asking for their rights? Is the Government justified to do that? Is that why the Government has brought this Bill here? Several questions abound every time. What is the Government's intention in bringing this Bill here if it cannot address this particular issue? That is a very dehumanising situation.

Mr. Temporary Deputy Speaker, Sir, why do we have so many criminals in our jails? As Mr. Muite said, you cannot live without a loaf of bread. You cannot be an accomplished father if you cannot feed your children, clothe them and pay school fees for them. Why has the security situation deteriorated so much in the country today? Does the

Government address itself to this aspect? If we could generate enough wealth, provide jobs and make the environment conducive for business, the crime level in this country could reduce by up to 90 per cent. Unless one is a born criminal, he would want to look for a lawful way of earning a livelihood.

I was very disappointed that the other day a Minister of the same Government which has proposed our laws went ahead and destroyed the only livelihood for thousands of Kenyans in the micro-business sector, who comprised of hawkers and kiosk owners, in Mombasa and Nairobi. What are these poor people expected to do now that they can neither feed their children nor pay school fees for them? Where are they supposed to go? What are they expected to do? They have been left in the cold without any future. The Minister has a good car and a big salary. So, one can very easily break into his house and rob him of his property. That is why we now have very many petty criminals in this country. It is these petty criminals who have filled all our prison cells. These prisoners cannot even be given their rights because nobody respects them.

Mr. Temporary Deputy Speaker, Sir, the economic crimes that have been committed by well established criminals go unmentioned. Who is behind these criminals? These are criminals who enjoy their lives riding in limousines. They have continuously suppressed the rights of the common *mwananchi*. Why are they not being prosecuted? For instance, since the Goldenberg issue came to the fore some ten years ago, there has not been a single day when court proceedings to prosecute the criminals took place. What we have seen has been one constitutional application upon another. Some evidence was taken to court in a pick-up truck by a criminal in an effort to justify his actions. The said criminal has a battery of lawyers, and magistrates always listen to them. These are people who have fleeced this country. Billions of shillings have gone down the drain and yet to date not a word has even been said about the crime.

The persons who have been humiliated most in this country are Members of Parliament, just because they try to address the issues that affect their poor constituents. Some people have been allowed to import tons of powder milk into the country as our farmers pour down their milk. Today, even dogs do not drink milk. Even cats, which are known to like milk so much, when they see milk nowadays, run away. Why? Because there is too much of it. Nobody wants to buy milk. If one buys it, he buys it at Kshs3 per litre, and yet we expect a farmer who sells his milk at that price to continue paying school fees for his children and continue to live with dignity, like any other person. It is impossible to wipe out crime. So, insecurity in this country will escalate to an extent where even the police may not be able to enforce the law.

Mr. Temporary Deputy Speaker, Sir, some time back, the Minister of State in charge of internal security said that Nairobi has a strength of about 2,000 police officers against four million people. This means that every police officer polices about 2,000 people. Is that practical? No wonder police presence is only felt when there is a small demonstration. For instance, when teachers and air traffic controllers take to the streets is when you will see the police. They are loaded into trucks and driven to the scenes to commit crimes against humanity. They beat up people senseless, as they did yesterday. Doing so is criminal. Ironically, the police, who are supposed to apprehend criminals, are the ones who perpetuate such crime. Who is there to question the police on behalf of helpless Kenyans if even parliamentarians can be mishandled right and left?

If there is going to be a good law like the one we are about to approve here, despite the shortcomings contained in this Bill, there should be the political will to follow the provisions of every law we pass here. Otherwise, we might make such laws and end up not applying them, just as we have done with the very many good policy and legal papers which have ended up gathering dust in shelves. The experience in this country has been that even if we make some good laws, like the Donde Act, they are watered down by magistrates who do not care at all about the welfare of the people out there. Just because they stay in up-marked estates, they care very little about other people out there. Why has the Central Bank of Kenya become more of a trader than a regulator nowadays? So, our laws should be given effect. These are the laws that need to be enhanced. Our magistrates need to understand that Parliament does something good for the benefit of this country. More so, that is why we have these kind of Bills before Parliament.

Mr. Temporary Deputy Speaker, Sir, to finish what I am saying today, I was mad with the idea that Parliament will nominate 15 Commissioners, and the President will appoint seven of them. Why that leeway? Does this House not have enough capacity to nominate the right Commissioners? If there is going to be any number over and above the statutory required number, it should just be one person. Therefore, if we are saying that we need seven Commissioners, we can only give the President a maximum of eight names, from which he will be able to have confidence in this House.

This House has the confidence of its electorates. All Kenyans have elected hon. Members to this House, and they have hope in them. If the President cannot trust the capacity of this House, then, it is a problem. The magistrates and the courts cannot operate without this House. The police cannot operate without this House because it must give them the laws for them to interpret or enforce out there. Therefore, whatever is recommended by this House should be held with all the dignity that it deserves.

It is my appeal to the Government, which drafts all these documents, to keep in mind that there is so much in this Bill that is not covered, especially talking about the genesis; where do all these problems come from and why is it

that we cannot handle so many criminal activities that is afflicting this country. Let us address that issue, and we will enforce the laws in this Act.

Thank you, Mr. Temporary Deputy Speaker, Sir.

Mrs. Seii: Thank you, Mr. Temporary Deputy Speaker, Sir, for giving me the opportunity to contribute. I would like to say that this Commission, as much as it is very welcome, assumes a lot of things. It assumes that the institutions in Kenya are normal and perfect, and that changes have taken place. I am one of the people who are a little bit pessimistic about such a Commission. We have seen so many Commissions come and go. Some of them exist, and they are doing nothing. I hope this will give us another background of a changed Kenya; hopefully, another Kenya with a different leadership. But I dare say that there is need to have a lot of changes which such a Commission should offer, with such wonderful laws and proposals in it. Kenya, we know very well, has had an occasion to miss even assistance in the form of foreign aid because of our very bad human rights record. This has persisted. We have lots of advantages. We have international human rights commissions that have come up. We have something like SIDO, for example, which in itself provides certain requirements along human rights line. We have within our country NGOs and institutions that have advocated for human rights. We have every provision which detects whether a country has good human rights record and observes human rights.

But all of those have failed. I want to say that it has failed because of our bad governance. Without good governance, no matter what kind of laws we put in place, we will just be talking about them and breaking them. We need a lot of changes in our country; starting from the law courts, institutions, police, service institutions, and almost everywhere. In my mind, I see Kenya as a country in a dilemma, where we say one thing and do another thing.

Many hon. Members have spoken about a number of things, and we are repeating ourselves. We are talking about the police, administration and institutions that are supposed to assist us. Who are we lamenting to? Who is going to help us in this country? Are those things, which I said, getting into appropriate ears? Are we just talking so that people hear us and so that they know that there is a Parliament in this country? What is going to be the solution for this country?

Mr. Temporary Deputy Speaker, Sir, there are so many relevant things in this Bill. I read it with a lot of interest. In 1984, there was need to domesticate some of the laws which Kenyans ratified. We sent some of our people to these international conferences. I think, as a matter of public relations, they ratified these laws, but they are never domesticated. Laws that have never been domesticated have no value to the nationals of that particular country. When are we going to have people who will take responsibility and make sure that these international laws are ratified and domesticated in our country? SIDO aims to eliminate all forms of violations against women, including domestic violence, rape, FGM, early marriages, harmful cultural practices and others, and we are still talking about these things, more than 30 years after Independence. No wonder Kenyans have so much apathy when it comes to even doing things even for themselves. We need to ratify and domesticate these laws, so that we can eliminate all forms of discrimination, not only against women, but even against other people. I know this was done in 1985, in order to make the international community think that Kenya is a good country, but there was nothing that was followed up.

I come from a place where human rights violation is rampant. I have had, on many occasions, experienced human rights violations, even against myself. I want to say today - now that I have the opportunity - that human rights violations are serious in areas where the level of ignorance is high. This is why I think that, in this particular Commission, some of the things that they are supposed to do include monitoring, working together, educating, advocating, initiating and developing a kind of synergy.

I will never forget the day I was whisked into a cell. Up to this day, I have not been told why I was put in there. Members of Parliament have got a place to air their grievances with regard to the violation of their rights. But there are so many people in this country who live below the poverty line and they cannot afford to bribe a policeman, so that they can be set free. There are so many people in this country who have seen their kiosks go up in smoke or have been bulldozed out of their premises with all that they owned in this world, but they have nothing to say. Human rights violation in this country is painful to those who have very few possessions.

Mr. Temporary Deputy Speaker, Sir, with regard to the appointment of those who will sit in the Commission, I would like to say that we have witnessed many occasions when people have been recycled and I have a lot of fear that there will be recycling in this Commission. Every time a District Commissioner or a parastatal head makes a mistake in one place, he is transferred to another one. If a District Commissioner steals something in Turkana, he is most likely to be taken to Keiyo District. Recycling of people is going to pose a great danger to the appointment of persons to sit in the Commission. I concur with those hon. Members who have indicated the need for Parliament to choose the Commissioners. By so doing, we shall have Commissioners who are known and whose record is very clear. Recycling people because they have godfathers is going to damage this Commission. We have seen many Commissions on which people have been appointed to, but they have not performed very well because that was a way of getting jobs for those people.

Mr. Temporary Deputy Speaker, Sir, another aspect of this Bill which should be made clear is the ability of this Commission to work with Non-Governmental organisations (NGOs). Yesterday, we had a list of so many NGOs

that spearheaded the protection of the rights of the people in this country. Those NGOs have been the target of the system. Policemen are sent to go after them all the time because they are regarded as people who are after exposing our country in the wrong light. But we know that today, the world is just like a village. What happens in Nairobi is reported almost immediately by the Cable News Network (CNN) and the British Broadcasting Corporation (BBC) and all the other media. The NGOs are very essential when it comes to safeguarding human rights in our country. This Bill has indicated that the Commission is going to work together with those organisations. I wonder whether this will be observed. What is going to happen to the police and members of the Provincial Administration who have been taught that anybody working for an NGO is an enemy of the system? Are they going to go to school once more? We still have the same administrators! What is going to happen to them? Unless there is a definite education and sensitisation of the people, this is not going to work. I am saying so because we have had other Commissions which came into being, but when the people are ignorant, their ignorance is exploited. When you exploit the ignorance of the people, then you can treat them the way you want.

Mr. Temporary Deputy Speaker, Sir, we need education for the public so that they can know what their rights are and what the importance of this Commission is. Yesterday, it was indicated and I want to support the idea that there should be a human rights office in every district and people should be educated on the importance and the functions of that office. By so doing, human rights education will be brought closer to the people in order to exploit the provisions of the law. Unless we do that, the people will remain ignorant and public servants who exploit the people will not be able to observe what is written in the law. I believe that we have one of the best constitutions in the world but it cannot work because the people do not know about it and they do not know what their rights are.

Mr. Temporary Deputy Speaker, Sir, one Sunday, in the constituency where I come from, I met with police officers without uniform, moving from house to house in the village, checking for *busaa* and beating the people. For one to be set free when arrested in a *busaa*-related offence, one had to pay Kshs500. Who is going to speak for those people when the very people who should protect them are the ones harassing them? We must have intensive education so that the people will know the legal provisions available to them. In so doing, they will be able to use what is available to them.

Mr. Temporary Deputy Speaker, Sir, there are many rights which are violated in our country and I do not want to repeat what the other hon. Members have said. But I have a case in mind. We have many children who have been defiled by headmasters, chiefs, older people or highly connected people. We have many cases of rape. I have been distressed by cases of rape and defilement, particularly in Keiyo South where the District Criminal Investigations Officer (DCIO) investigates those cases but we get to hear nothing about them. The culprits are never taken to court and the victims get frustrated by police officers who keep on recording statements from them and, at the end of the day, the results of the investigations do not get to court. Why should we have somebody there who is abetting the abuse of the rights of the people? These officers are the same people who are supposed to protect the rights of our people! You can ask questions, you can even write to the Commissioner of Police but nothing happens. So, what are we talking about? We are talking about rights which will not be attained unless there is change in individual characters and institutions.

Mr. Temporary Deputy Speaker, Sir, I would also like to support the idea that a human rights course should be offered at Kiganjo to improve the understanding of our police officers about human rights. They are our sons, brothers, husbands and wives but we do not know what goes on in Kiganjo, so that they have in their minds the ability to destroy other people's rights with impunity. How can a poor person face a policeman with a gun? You know that it is your right to ask for a search warrant if they come to your house. But how do you do so when somebody is standing outside your house with a gun? You are immediately thrown into a Land Rover and they throw you into a kangaroo cell. The following day, when your relatives come, they are asked to give a certain amount of money so that you can be set free. We have a problem with our Police Force. We have a problem with our administrators who have godfathers somewhere else. Those people use the Provincial Administration to violate the rights of the people. If the same people who are supposed to protect our rights are the ones who violate our rights, then we are not going anywhere as Kenyans. We need to think of another way of training those people, so that our brothers and sisters can live in peace. I witnessed an incident whereby a poor man was being beaten up by an administration policeman, who was immediately transferred from the station so that nobody could trace him. These are serious violations of human rights.

Mr. Temporary Deputy Speaker, Sir, it is time for Kenyans to stop and ask themselves: "What will we do to change our country?" Things have gone from bad to worse. So many books have been written, instructions have been issued, Bills have been published and Commissions have been formed, but life continues as if nothing happens. There is something drastically wrong with us as Kenyans. We must do some soul-searching and develop some humanness. If people in high offices are behaving in the same way, what does this mean? If I hold a Bible and promise to protect the rights of the people in a country where there are clashes, there are refugees in their own homes and so many streets children, I will be lying. Children are in the streets because their parents cannot afford to pay school fees and live below the poverty line, or the kiosk which was the source of their livelihood has been demolished by a very powerful person who wants to build a house on that plot. We have lost our humanness and must do something about it. I pray to

God that the next Government will address these issues, so that we can begin to live again and do things in the right way.

The rights to have a place to live and to bury your loved ones are not there. I want to quote a case in point about the people of Kabnorok in Barwesa Division of Baringo District, who have lived in that area since time immemorial. This is their ancestral area. Kabnorok area is very near the lake and that is where the people fish and have lived all their lives. But this land was allocated to the Kenya Wildlife Service (KWS) in 1991, without the consent of the people and they have to vacate that area. Where will they go? Today, these people are trying to say something to the Government, but when they hold any meeting, they are met with the very strong hand of the Provincial Administration, which uses tear-gas canisters, batons and even shoots in the air. On 29th March, 2002, nine people were taken away and thrown into a cell, and up to today nobody knows their fate.

Mr. Temporary Deputy Speaker, Sir, we have no feelings for other people or ourselves. People look upon the Government of the day to change these things, but changes are not forthcoming. What must we do then? If we educate the people and ensure that they have the knowledge, then they will take decisions and confront the policemen who harass them. They will demand their rights and this will not be easy. Education is the only thing that can save this country. When we have formed commissions, such as the proposed Commission, we should have offices in areas which the ordinary person can reach. We have the Electoral Commission of Kenya (ECK) offices even in our districts. Today, we have the Constitution of Kenya Review Commission (CKRC), and I want to say that it has opened the eyes of many Kenyans. For the first time, civic education is being provided in many areas of Kenya and Kenyans are beginning to ask questions. Could this be done with this proposed Commission, so that education is provided and people begin to understand what it will be all about? People will begin to claim their rights and say that certain things are not right.

We need to change syllabuses in our learning institutions, particularly in the police force. We need to retrench criminals within the police force. We also need to change our attitude towards our fellow human beings. If we do not do that, we shall retain Kenya's reputation as a country with the most human rights violation cases. That is the reputation that we have. For those of us who occasionally attend international conferences, we know that Kenya is known for that. Why is this so? People out there see these things happening on television screens. They see how policemen beat people up regardless of who they are. Something must be done about these brutal people, namely, the policemen.

Mr. Temporary Deputy Speaker, Sir, we need to stop recycling bad people in our community. We need to stop recycling administrators and heads of institutions. We have to take courage and retire people when it is time for them to retire. We must take courage and change our systems. I pray to God that all the beautiful proposals that are in this Bill will be implemented. If we do not implement this Bill, we will suffer and leave a bad legacy for our children.

I would like to also mention the right to accommodate the diversity of the Kenyan people. I have in mind the discrimination which takes place in the issuance of identity cards. I hope the diversity of the Kenyan people could be accommodated. We are so diverse, live in different areas and there are people who have no right even to vote because nobody will issue them with identity cards. Many obstacles are put on their way. For example, an identity card applicant is required to take with him his great grandfather's birth certificate. Our great grandfathers had no birth certificates. This means that the applicant will not be issued with an identity card, and, therefore, will not be issued with a voter's card. Therefore, he is disenfranchised and his right is violated.

Mr. Temporary Deputy Speaker, Sir, we need to observe the principles of impartiality and gender equity. The greatest sufferers of human rights violations are women and children. Women and children have suffered so much. Domestic violence and discrimination in all areas are rampant and this is so disheartening. This can be illustrated by the low women representation even in this House. It is not that women have a lesser brain, but is because of discrimination and marginalisation. Women are discriminated against to the extent that they do not have access to so many things. They have no access to property and have almost no right to their own lives. Any civilised society which does not respect the rights of women and the girl child is barbaric. Kenyans need to observe some of the provisions which other countries observe, so that we can eliminate all forms of discrimination against women. We must even have a balanced number of hon. Members in this House. The number of nine women hon. Members out of 224 hon. Members, cannot even be explained by the 8-4-4 mathematics. This just indicates what kind of people we are. This is discrimination and breaking of women spirit through domestic violence, rape, early marriages and the female genital mutilation.

We must ratify and domesticate the conventions that are available to us. If we follow up what is indicated so clearly on pages 106 and 107 of the Bill, such as encouraging the efforts of institutions and informing and educating our people, then perhaps this Bill will see the light of the day.

Mr. Temporary Deputy Speaker, Sir, we need to create a better country, and it is the responsibility of us all to do so by observing the rights which are available for every human being; so that nobody feels like he or she does not belong to Kenya, or is not a Kenyan. By so doing, we would be encouraging other people who have helped us in doing this.

Finally, I will not sit down without appealing to the Government to make sure that we begin practising this by not sending the police to disrupt assemblies, like Harambees; football matches, and so on. If we, as hon. Members cannot even do this kind of thing, how much more can the other people who have no voice do? We are supposed to air the voice of these voiceless people! I hope when this Bill becomes law, it will form a guiding light for us so that we can live better lives.

With those few remarks, I beg to conclude.

Mr. Muturi: Thank you, Mr. Temporary Deputy Speaker, Sir, for giving me this opportunity to contribute to the debate on this Bill. I also fully associate myself with the sentiments expressed by those colleagues who have, among other things, given ideas or suggested that if the intention of establishing the Kenyan National Commission on Human Rights is not merely to create some plum jobs for certain individuals who are resident in Nairobi only then it must, of necessity, be clearly stipulated that the offices of the Commission must be established in every administrative unit in the country. In saying so, I am bearing in mind that it should be proposed and there is one of the provisions in the Bill which states that the Commission may establish such regional or other offices, as it may deem necessary. That is a blank cheque. It means that the Commission may not actually establish any such regional or other offices as proposed in the Bill.

Mr. Temporary Deputy Speaker, Sir, granted that, even at the very beginning in the form of definitions; we talk of human rights as being the fundamental rights and freedoms of any individual protected under the Constitution and any other rights provided for in any international instruments. It is self-contradictory then, not to have offices of the Commission at every administrative area in the country. This is because in a lot of cases, when we talk about violations of human rights, it immediately conjures up images of the atrocities that are visited on the ordinary citizens and, indeed, even leaders. This cannot be confined to Nairobi only or some certain regions as it has been proposed in this Bill.

Mr. Temporary Deputy Speaker, Sir, the Bill proposes that the Commission may receive oral complaints. If oral complaints about violations of human rights are to be made to the Commission, surely, that in itself should suggest, among other things, that there must be avenues made available to the citizenry about where they will make those complaints. We all know too well that such complaints about violations of human rights could be made against any officer or public servant and, therefore, if facilities are not made readily available to the general public at the lowest levels, then all we will be doing, as much as we may be praising this Bill, will be just to create some organisation whose principal place of operation will be in Nairobi. I may be right to say that, in the foreseeable future, we are just going to have a body operating within Nairobi. Since among the functions of the Commission is to hold seminars, which have become extremely fashionable in this country, I can see us having a Commission of about seven people; relaxing within Nairobi; in the Five Star Hotels, pretending to be preaching to itself, of course, and several converts about human rights.

Mr. Temporary Deputy Speaker, Sir, when we say that among those rights which are to be protected are under any of the international instruments to which Kenya is signatory to, the first question which we need to ask ourselves is; how many are these instruments? This relates to human rights issues and we wonder whether they are ever published. I am quite aware that recently, some answer was given here, from the Ministry of Foreign Affairs and International Co-operation, that the instruments are available. But if hon. Members are not aware of how many international instruments this country is signatory to, yet we are here making a law which says that we are protecting our citizens against violations of such rights contained somewhere in some instruments which have not been made public to Kenyans, what are we saying? I think I am right to say that this Bill is a fairly well-sounding document which is intended to create the Commission, but without, first of all, seriously addressing the issues of what human rights it proposes to protect or to promote--- Among those international instruments, the definition of which we are given here; such conventions, declarations, statements or principles relating to human rights adopted by the General Assembly of the United Nations; the Organisation of African Unity, or any other international or regional organisation of which Kenya is a member. I think this is a big joke. All matters relating to human rights are declaration of principles, policies or intentions by any of these organisations. We are told that these are some of the things which are being promoted and protected. How do you promote what you do not know? The constitutional protection that is given there, I believe, is what is to be found in Section 70 of the Constitution or, indeed, all those rights which are given in Chapter 5 of the Constitution. What steps or evidence do we have to show that, in the first instance, we have educated our populace or citizenry about those rights?

Mr. Temporary Deputy Speaker, Sir, those of us who frequent courts in this country are aware that if you mention international instruments, majority of our judges, whom I believe are 95 per cent and are extremely conservative, will tell you that they will administer the law as they know it. This is because it is not their intention to venture anywhere beyond the four corners of their court rooms to go and find out where those international instruments are found. These include United Nations (UN) Conventions. The history of this country is replete with cases of people who have been taken before courts of law in this country, complained about torture and being taken to court at 6.00 p.m. on trumped up charges and we know, of course, what happens. This is because even in those courts, there will be

complaints of violation of human rights. Where are the provisions in this Bill to deal with cases of such violations if found to be practised within our corridors of justice? I have gone through the 36 sections and there does not appear to be anything that touches on that.

In this Bill, it is proposed, among others, that the Commission may seek information from any public servant or it may, on its own, initiate investigations. Indeed, under Section 25, it proposes that the Commission can even undertake a prosecution. I see some contradictions in this provision. We all know that under our Constitution, the Attorney-General may take over any proceedings commenced or started by any other person or body and terminate them or proceed with them as he chooses. When we have a body such as the Kenya National Commission on Human Rights which in this Bill should also be functioning independently--- It clearly says that in exercise of its functions, it shall not be under the control of any person or body. If it undertakes a prosecution which could be against the Attorney-General, who chooses to take over the proceedings, what is the recourse to whoever may have been the victim of the violation of human rights? I have deliberately chosen to highlight on what I consider to be areas within the Bill that need to be reconsidered. For instance, when it is said that upon receipt of a complaint, the Commission may investigate and conciliate complaints on its own initiative where the nature of the alleged human rights violation makes conciliation both possible and appropriate, in my opinion, this creates a fertile area for the police not to do their work, especially, in family disputes. This is because these are cases the police will always say that you can promote reconciliation. So, the police may not do their work and the Commission may also decide that this is a family matter and, indeed, there could be very serious violation of human rights. What will happen in a situation of this nature? The courts will feel comfortable not to take any action and refer the matter to the Commission. Are we not giving a lot of leeway to many law enforcement agencies not to take action even in matters of human rights violation?

Mr. Temporary Deputy Speaker, Sir, moreover, as we talk about human rights, it does occur to me that this Bill seems to focus mainly on the fundamental human rights which are contained under Section 7 of the Constitution. What becomes of the second generation human rights which have been adopted by the various organisations like the UN and Organisation of African Unity (OAU), for example, the right to education, shelter and food? The Commission is supposed to investigate and make a report about the Government compliance. The Commission can also initiate proceedings in the High Court. Is it being proposed that if the Commission finds that the Government has neglected the Turkana in the area of education, then it should go to court and we have the Government being directed to go and provide education among the Turkana in a given manner? What I am trying to highlight here is that this aspect has not been properly addressed. This is because what will happen in the event that there is non-compliance by the Government on the recommendations made by the Commission?

The Commission is also barred from investigating matters that are already before court. Of course, I believe that this is through the old British English principle of *sub-judice*. But as a person who had served in the Judiciary for a short period of 20 years, it is in the courts where there is terrible violation of human rights. This starts with the police who are known to be acting at the behest of powerful forces. They will "grab" you and say that you have violently robbed so-and-so. They know very well that if they prefer a charge of robbery with violence under the Hanging Act - Section 296 of the Penal Code, you will not be eligible to bail. I am sure Mr. Mwenje would bear me witness about this. The police officers know very well that they do not have any evidence whatsoever against you, but because of the desire to punish you, they will detain you at Kamiti Maximum Prison. According to this Bill, the Commission can visit places of detention, but may not interfere with matters pending before court. Anyone of us, including Mr. Mwenje, will find himself languishing in Kamiti Maximum Prison. The Commission will not investigate this because it will be a matter pending before court. But, for a whole year, the case will be adjourned because of lack of witnesses. I would suggest that the Attorney-General gives very serious thought to this area because many Kenyans---

Mr. Mwenje: On a point of information, Mr. Temporary Deputy Speaker, Sir. I am sure the hon. Member will be glad to hear that even this also happens in the case of mistaken identity. One time I was arrested because of mistaken identity. The police officers were supposed to arrest Mr. Muihia but, instead, they arrested me. After attending court for seven times, they came and withdrew charges against me. That was not only an infringement of human rights, but police harassment.

Mr. Muturi: Thank you, Mr. Mwenje, for that information. I am highlighting this point because there is a provision here that does not allow the Commission to investigate matters pending before court. We are trying to say that the Commission will investigate human rights violation. **[Mr. Muturi]** but at the same time, even in the areas where I know there is a lot of violation of human rights, it is a no-go-zone for them. I will also suggest that the Attorney-General seriously thinks about that particular provision because we are human beings and not infallible. Those courts are manned by human beings and they are not infallible. We have heard of funny judgements, even some that purport to overturn laws passed by this House and, of course, on very spurious grounds. Therefore, it will not be right to bar the Commission from investigating cases of human rights violation even on matters pending before court.

Mr. Temporary Deputy Speaker, Sir, the Commission, among other things, is mandated to seek secondment of officers from the Public Service Commission (PSC) to permanently perform such duties as the Commission may

from time to time allocate them. A lot of times, cases of human rights violation are exclusively made against public servants. I would like to know at what stage the Commission is supposed to start investigation, and at what stage it is supposed to carry out its mandate of public education. Indeed, if this Commission is supposed to educate people on their human rights, as free citizens, why then can they not do the job of educating Kenyans on their constitutional rights as a whole? It is those same rights which are protected under the Constitution, which will be protected by the enactment of this Bill. If this Commission is to do the job that it is envisaged to do, I would urge that it is given the mandate to publicly publish its report continuously. That report must include other things such as citizens' rights, the Government's obligations to its citizens and vice-versa.

Mr. Temporary Deputy Speaker, Sir, I am concerned about what is likely to be created by the enactment of this Bill. We will have an extremely powerful Commission that will be drawing its resources directly from the Consolidated Fund. This Commission will be given a blank cheque; they will sit and determine what they need to pay themselves and only consult the Treasury. I would have liked to see a provision that makes reference to this Parliament with regard to what the Commission is likely to do regarding its resources. Mr. Temporary Deputy Speaker, Sir, as I conclude, I wish to point out that since the Commission is supposed to inform and educate the public as far as their human rights are concerned, and for the purposes of respecting such rights by means of a continuous programme of research as provided for under Section 16(1)(c), then the Commission must not just limit itself to matters of human rights violation. It should actually continuously visit prisons, chiefs' camps, places of detention or related facilities. I want to suggest that it should be specifically stated that the Commission will visit police stations, chiefs' camps and such related facilities. This is because if we leave it ambiguous like this, we might be giving a leeway to the Commissioner of Police to issue edicts that will bar certain persons from visiting those places other than the Commissioners. What about the staff of the Commission? We did see this the other day when the High Court made its decision with regard to KACA. An argument was adopted that other than the Director, no other junior officer may prosecute. I would suggest that we have a clause specifically saying the staff of the Commission will be at liberty to visit any prison, police station, chief's camp, or any other such related facilities in which Kenyans may be detained to investigate, either on his own or upon a complaint that has been made on any issue of human rights violation.

Mr. Temporary Deputy Speaker, Sir, with those few remarks, I beg to support.

Mr. Muiruri: Thank you, Mr. Temporary Deputy Speaker, Sir. I will not contribute for the whole 30 minutes; I will take a shorter time.

I have no doubt whatsoever that the establishment of the Kenya National Commission on Human Rights is long overdue. This is because, in Kenya, the way things are, there is no respect for human rights. You only have to watch the television and other media channels to see the police beating up elderly women. You feel it when you see fellow Kenyans, who are supposed to be protecting our own people, beating up others like animals. After those people are beaten, the only thing they have to do in law is to report to the same police who were beating them.

I happened to be a victim of arrest. I was told that the police were looking for me, then stupidly I drove myself to the Gilgil Police Station where I was locked up in the cells. I was then driven to Kiambu Police Station where I was locked in the cells for three days. I used to be escorted by three Land Rovers and about 15 police officers every time I was being transferred. What a waste of resources! At Kiambu Police Station, there was one area in the cells where I witnessed very young children, between five and 15 years, and very elderly women locked in. Those people had been in those cells for more than four months waiting dubiously to be escorted to their homes. That part of the police station is like their own home. They wash their clothes and eat from there.

Mr. Temporary Deputy Speaker, Sir, this Commission should look into very many areas which have rendered Kenyans helpless. Police brutality in this country must be done away with. I believe this Commission should have the powers even to arrest and to prosecute. The current practice is very unfair, because if, for example, I am illegally arrested, slapped or generally beaten up by police officers, I will be told to go and report to the OCPD who will start to investigate. In essence, it is the police officers investigating themselves. There cannot be any justice in such a system. The other issue is that, the kind of---

Mr. Gatabaki: On a point of order, Mr. Temporary Deputy Speaker, Sir. I hate to interrupt the hon. Member for Gatundu North, but he has raised an issue, that everybody from the Government, including the Secretary-General of the New KANU has heard, that in Kiambu, the police detain young people for up to four months. That is a very serious allegation against Mr. Raila who might become our next President. This is a very serious allegation. Is it in order for him to make that kind of an allegation without any substantiation from the Government? It means they are confirming that, that is the truth.

Mr. Muiruri: Mr. Temporary Deputy Speaker, Sir, there is nothing to substantiate because what I am saying is the truth. I am talking from personal experience because I was there.

The Minister for Energy (Mr. Raila): On a point of order, Mr. Temporary Deputy Speaker, Sir. The hon. Member is actually trying to mislead the House. He should have challenged the hon. Member, who was speaking, to substantiate and not the Government. This is because, the Government knows that it is a very serious statement and that is why we are just laughing it off here.

Mr. Mwenje: On a point of order, Mr. Temporary Deputy Speaker, Sir.

The Temporary Deputy Speaker (Dr. Anangwe): Order, Mr. Mwenje! He is responding to a point of order.

Mr. Muiruri: Mr. Temporary Deputy Speaker, Sir, I said that I was arrested and detained at the Kiambu Police Station, and there are three cells at the Police Station. I was in one cell alone, the other one was occupied by children and elderly women. The other one is for the commoners, where about 50 people are placed in one cell. So, I am talking from a personal experience. Why should the police continue brutalising people including---

Mr. Mwenje: On a point of order, Mr. Temporary Deputy Speaker, Sir. Is it in order for Mr. Raila to ask Mr. Muiruri to substantiate the obvious, when he himself has been a victim of the same exercise before?

The Temporary Deputy Speaker (Dr. Anangwe): Order! Order! The issue here was specific. Mr. Muiruri made an allegation and, therefore, it was his responsibility to substantiate, but he has not.

Proceed!

Mr. Muiruri: Mr. Temporary Deputy Speaker, Sir, why do the police beat up people? For example, last night, anybody watching the KTN television saw the police brutally beating up the air traffic controllers who had gone on strike. You could see the anger of the police officers. The air traffic controllers were on strike because they are earning a very little amount of money, but the police officers were angered because they are earning even less. They were therefore releasing their anger on innocent people. There were some old people who were being forced to climb onto lorries, but since they could not, they fell down. These are the kind of things that must be done away with. It is a shame that the Commissioner of Police saw all that, but cannot do anything about it.

During the time Mr. Raila was advocating for multipartyism, he was beaten up alongside many other people. In the future we shall go to the KTN studios and take copies of the video tapes and get the people who were beating up others, and they will be prosecuted. I urge Kenyans to be on the look out for the personal numbers of the police officers who were beating them up for future prosecution. That is the only way out, because Kenyans have been beaten so much and for a very long time.

Mr. Temporary Deputy Speaker, Sir, the other issue is with regard to the economic rights of the people.

The Minister for Energy (Mr. Raila): On a point of information, Mr. Temporary Deputy Speaker, Sir. I would like to remind the hon. Member that he used to be a private eye trailing people around on behalf of his senior policemen. He was aiding and abetting what he is now actually condemning.

Mr. Muiruri: Mr. Temporary Deputy Speaker, Sir, that information is completely untrue! I served the Kenya Police Department for a very short time; about three and half years. That is the time when the police force was a police force, and people were recruited on merit! It is not like now, whereby, Mr. Raila is a Minister and the Commissioner of Police comes from the same area. I am told that during the last recruitment, he recruited 30 trainee policemen without any qualifications. I am told that some are not even five feet and 11 inches. They are five feet four inches. That is the kind of thing that we detest. The recruitment into the police force must be by merit. We have policemen on the streets who are five feet four inches. It is people like Mr. Raila who had them recruited!

The Assistant Minister for Trade and Industry (Mr. Ekirapa): On a point of order, Mr. Temporary Deputy Speaker, Sir. You heard the hon. Member make some very serious allegation against the Commissioner of Police. Could he substantiate whether the Commissioner of Police specifically recruited a large number of recruits from his own area?

Mr. Muiruri: Mr. Temporary Deputy Speaker, Sir, I do not know how to substantiate the obvious!

The Temporary Deputy Speaker (Dr. Anangwe): Order, Mr. Muiruri! You are better advised to stick to the Bill.

Mr. Muiruri: Thank you, Mr. Temporary Deputy Speaker, Sir. Before I do that, I do not have to substantiate the obvious. You only have to see some policemen who--- According to the law, a policeman must have a chest of 32 inches. He must be about five feet and 11 inches. We have many of them who are five feet four inches. Where did they come from?

The Temporary Deputy Speaker (Dr. Anangwe): Just stick to the Bill!

The Assistant Minister for Trade and Industry (Mr. Ekirapa): Mr. Temporary Deputy Speaker, Sir, he has not answered my question!

Mr. Muiruri: I think I have! This morning, the Minister for Agriculture issued a Statement---

The Assistant Minister for Trade and Industry (Mr. Ekirapa): On a point of order, Mr. Temporary Deputy Speaker, Sir. Are you satisfied that my point of order has been answered by the hon. Member? I would urge that if he cannot substantiate, he should withdraw and apologise!

Mr. Muiruri: This man has no point of order! This brother-in-law of mine has no point of order!

The Temporary Deputy Speaker (Dr. Anangwe): Order, Mr. Muiruri! I did say that you would be better off without digressing onto non-issues! Let him stick to the Motion!

Mr. Muiruri: Thank you, Mr. Temporary Deputy Speaker. This morning---

Mr. Munyasia: On a point of order, Mr. Temporary Deputy Speaker, Sir. Did you hear Mr. Muiruri refer to the Member for Amagoro as "this man", instead of the "hon. Member for Amagoro?" Is he in order?

Mr. Muiruri: Mr. Temporary Deputy Speaker, Sir, I called him a number of names! I called him my brother-in-law! In any case, the hon. Member is not a woman; he is a man!

The Assistant Minister for Trade and Industry (Mr. Ekirapa): Mr. Temporary Deputy Speaker, Sir, I think you can excuse him! He has a language problem!

Mr. Muiruri: Mr. Temporary Deputy Speaker, Sir, this morning, the Minister for Agriculture issued a Statement on the agricultural sector, and especially coffee. I tried to stand up to say something but I was not allowed to do so! Although I am not a lawyer, Section 75 of the Constitution allows people to protect their property in whatever form, including coffee. The situation in the coffee industry is that it has been looted. Many people have stolen and it is in very bad shape. The Minister admitted that a sum of Kshs18 billion has been lent to the Coffee Board of Kenya (CBK) by various organisations. Although he did not specify the organisations, that is a lot of money which is bound to the coffee farmers. He went further to give many cases of embezzlement of funds and so forth.

But he did not say who actually took the money! Instead of saying the CBK, he did not admit that in the CBK, there are representatives from the Ministry of Agriculture, Treasury and the various co-operative societies. For many years, the General Manager of the CBK must be an appointee of the Government. So, it is not the question of blaming a few directors here and there. It is the Government itself which has run down the coffee industry. Let us not be fooled by the Minister when he says that a few directors ruined the coffee industry. When the Coffee Bank was being formed, the extra Kshs63 million and Kshs300 million from the Treasury was all from the Government. The coffee farmers have no option whatsoever except to hold their coffee, appoint who to market it and get his money back. The appointment of further marketing agents by the same current Board appointed by the Government will not be accepted by the farmers. The farmers will be looted again and again.

Mr. Temporary Deputy Speaker, Sir, I am a coffee farmer and I can produce my turnout. Where my coffee has been sold for US\$5,000 and deducted marketing, milling and handling charges, I will end up with nothing!

The Minister for Transport and Communications (Mr. Mudavadi): On a point of order, Mr. Temporary Deputy Speaker, Sir. Is it in order for Mr. Muiruri to digress totally from the Bill at hand? He is reverting us to the Coffee Bill discussion!

The Temporary Deputy Speaker (Dr. Anangwe): Order, Mr. Muiruri! A point of order has been raised that you have already digressed to issues dealing with coffee and yet, the Bill at hand is about the Kenya National Human Rights Commission. I know you had an earlier opportunity where you wanted to argue out your case, but the Speaker ruled accordingly. Therefore, I will not allow you to take advantage of this opportunity to bring up a matter that has already been ruled over by the Speaker. So, could you stick to the Bill?

Mr. Muiruri: Mr. Temporary Deputy Speaker, Sir, I will conclude by saying that the rights of somebody are also human rights. When you take away what belongs to me, it is infringement of human rights. Coffee is money as well and when you take away my coffee and money, that is denying me my rights. If you are denying me what rightly belongs to me--- I believe the Minister knows what I am talking about. I am talking about the right to property. That is robbing me! I go to my *shamba* and plant my coffee and then you take it away! That is abuse of human rights. That is the point that I am driving home. It is abuse of human rights when you take away what is mine and there is nothing I can do about it.

The other point that I would like to raise is about the Administration Police. They are part of us. The Administration Police Department has served its purpose. It is high time we remained with one police force. The Administration Police Department is purely a duplication of security. Let me give you an example of a place like Thika where I come from. We have an Officer Commanding Police Division (OCPD), who is in charge of the police in the district. That man earns a very small amount of money. I think his salary is between Kshs15,000 and Kshs20,000. It is a very small amount of money and he is an OCPD who has served the Government for between 25 and 30 years! He is not even protected. He drives home in his car and reports back in the office. But then, he has got his counterpart who is a district commissioner, who has about eight policemen guarding his place. They work in shifts where he lives in his own house. He has got a car, armed escort and a driver. That is Government's wastage of money and those people do not do anything other than terrorising people. They do not do anything at all. It is high time the police force was streamlined and adequately armed, provided with transport and given enough salaries. The police force is so poorly paid that you cannot believe. They live on hand-outs. You only have to go to a police station where you will find two or three policemen living in the same house. The welfare of the police force must be protected. You have got to understand that when you are asleep in your own house, it is the policemen out there in the field who guard and protect you. They must be well catered for. They must be well paid. This Commission must be well funded. It must have the teeth to bite. It must have enough money so that all Kenyans can move freely. It must also take up all cases,

arrest and prosecute those found guilty, especially policemen who misuse their powers in the course of their duties.

With those few remarks, I beg to support.

Mr. Mwenje: Mr. Temporary Deputy Speaker, Sir, I realise I may not have much time today, but at least I will book the ticket for tomorrow.

I think I should really comment on the issue of human rights. I would like to talk about human rights particularly when the Attorney-General is here. Our Attorney-General is a man who is reputed very well regarding matters of human rights. Before he was appointed as Attorney-General, he was a renowned human rights lawyer. In fact, the first thing everybody expected him to do was to come up with this kind of a Bill here in this House. It has taken him too long to come up with this kind of a Bill. I am sure all those who know him from outside have been wondering why he has never brought to this House, a matter dealing with human rights because this is an area that he specialises in. I am sure the world would have wanted him to rectify all those issues regarding human rights violation which have been raised by Members of this House and can be raised by anybody in this country. There is a lot of human rights violation going on in this country and this is well known by literally everybody.

Mr. Temporary Deputy Speaker, Sir, it is a pity that 30 years after Kenya attained Independence violation of human rights is still being practised in this country. It still continues despite many complaints and reports made to the police. If you look at the report made by the Committee that was going round the country, it consists of issues concerning human rights. If you listen to the contributions made by participants of the Constitutional Review Process, most of the issues they are talking about today are to do with violation of human rights. It is a pity that the Government of the day continues advocating violation of human rights because they know it is being practised. Complaints are made to the police everyday. If you look at the police Occurrence Books everywhere in the country, you will find those complaints. You will find complaints even from very senior people and ordinary people, yet no action is taken. Tomorrow I will cite a number of cases which I was involved in, complained about and informed the Attorney-General personally and yet no action has been taken. The police will only take action on issues which they are interested in. If today they are told to go and look for Mr. Gatabaki, they will not even let him finish a piece of roast meat which he was taking, like it happened the other day. If they are told that there are some criminals with guns in Dandora, those policemen will keep off until the thugs have committed the offence. They will come later asking what happened. We are not protected. The human rights record of this country is very poor. Clause 16 of this Bill talks of the functions of the Commission. We want to know how the Commission will function, what action they will take and how they will offer protection to victims because we have seen so many commissions being appointed in this country and yet they are unable to do their job.

Today we can see that the Constitution of Kenya Review Commission is becoming irrelevant as regards the expectations of the people of this country. Those Commissioners do not even attend their offices. I doubt whether this Commission will serve anybody. The Commission on Land Laws, which is led by Njonjo, is another example. Apart from attending sittings and being driven in big cars, they have achieved totally nothing. When they came to Embakasi I asked them: "What powers do you have? What action will you take after all that we have told you here?" It was pathetic that they admitted that they had no powers to do anything. Why do we have these Commissions wasting public funds and achieving absolutely nothing at the end of the day? I hope this is not another Commission which will simply spend public funds some of it derived directly from the Consolidated Fund. We might decide here to award these Commissioners hefty salaries and they end up achieving nothing. This is my main worry concerning these Commissions.

Kenyans are used to hearing about formation of Commissions. The other day somebody made a joke that if you go to heaven and you are asked why a certain person did not go to heaven, the Kenya Government will say: "I will appoint a Commission to investigate the other Commission, which was investigating satan to know why those people on earth were not investigated properly."

ADJOURNMENT

The Temporary Deputy Speaker (Dr. Anangwe): Order, hon. Members! It is time to interrupt the business of the House. The House, therefore, stands adjourned until tomorrow, Thursday, 11th April, 2002, at 2.30. Mr Mwenje, you will have 24 minutes to continue tomorrow.

The House rose at 6.30 p.m.